

CIRCUIT COURT FOR BALTIMORE COUNTY  
CIVIL GENERAL

DOCKET 27 PAGE 341 CASE NO. 90CG741 CATEGORY APPEAL

ATTORNEYS

IN THE MATTER OF  
DANIEL G. SCHUSTER, INC./  
JOSEPH L. CARDINALE &  
CRONRIDGE INVESTORS, et al,  
PROPERTY LOCATED ON SOUTH SIDE OF  
CRONDALL LANE, 468' EAST OF C/L OF  
OWINGS MILLS BOULEVARD  
(3717 CRONDALL LANE)

Joseph C. Wich, Jr.  
Robert A. Hoffman  
Judith A. Arnold  
Venable, Baetjer & Howard  
210 Allegheny Ave. (04) 823-4111

Julius W. Lichter  
Howard L. Alderman, Jr.  
Levin & C. P.A.  
305 W. Chesapeake Ave., #113  
(04) 321-0600 (DANIEL G. SCHUSTER, I.

CRONRIDGE INVESTORS  
OWINGS MILLS III GENERAL PARTNERSHIP  
CRONDALL LANE LIMITED PARTNERSHIP  
OWINGS MILLS COMMERCE CENTRE LIMITED PARTNERSHIP  
SEVEN CRONDALL ASSOCIATES LIMITED PARTNERSHIP  
EIGHT CRONDALL ASSOCIATES LIMITED PARTNERSHIP  
NINE CRONDALL ASSOCIATES LIMITED PARTNERSHIP

TRANSCRIPT IN BASEMENT  
LOCATION: 341 13

Feb. 23, 1990 - Order for Appeal from the Decision of Cronridge Investors, Owings Mills III General Partnership, Crondall Lane Limited Partnership, Owings Mills Commerce Centre Limited Partnership, Seven Crondall Associates Limited Partnership & Nine Crondall Associates Limited Partnership fd.

Feb. 28, 1990 - Certificate of Notice, fd.

Mar. 5, 1990 - Appellant's Petition of Appeal w/ Exhibits fd.

March 7, 1990 - Plff's DANIEL G. SCHUSTER, INC. Answer to Petition of Appeal with Same Day App. of Julius W. Lichter & Howard L. Alderman, Jr. fd.

Mar. 23, 1990 - Transcript of Record fd.

Mar. 23, 1990 - Notice of Filing of Record fd. Copies sent.

April 30, 1990 - Appellants' Rule B12 Memorandum fd.

June 12, 1990 - Appellee's Responsive Memorandum fd.

July 10, 1990 - Appellants' Reply Memorandum fd.

July 7, 1990 Hon. William R. Buchanan, Sr. Hearing had. Opinion held. Opinion to be filed.

Aug. 29, 1990 - Opinion and Order of Court that the decision of the County Board of Appeals of Baltimore County is AFFIRMED fd. (WRB,SR) /Appellants'

Sept. 25, 1990 - Order for Appeal to the Court of Special Appeals fd. (5/90) 90CG741 001 R02 112/5

October 4th, 1990 Order to Proceed fd. (PLK).

EV GEN 90741  
EV CLK 50.00  
ENTHREN 72 50.00  
09/28/9

CASE NO. 90CG741

(13) Oct. 9, 1990 - Copy of Correspondence requesting the transcript, fd.

(14) Dec 13, 1990 - Appellant's Motion for An Extension of Time to Transmit Record and Same Day Order from the Court of Special Appeals that the Record shall be Transmitted on or before February 1, 1991 fd. (UDG)

(15) January 31st, 1991 Supplemental Record of Proceedings before the Zoning Commission and the Board of Appeals of Baltimore County fd.

January 31st, 1991 Original record of proceedings mailed to the Court of Special Appeals of Maryland by Certified Mail.

Nov. 26, 1991 - Original Papers & Mandate from the Court of Special Appeals received & filed.

Oct. 11, 1991 - Per Curiam filed. Judgment affirmed. Costs to be paid by Appellants.

Nov. 12, 1991 - Mandate issued.

EV GEN 90741  
EV CLK 50.00  
ENTHREN 72 50.00  
09/28/9

IN THE MATTER OF SCHUSTER CONCRETE/ JOSEPH L. CARDINALE, ET AL  
CRONRIDGE INVESTORS, INC., ET AL  
RE PROPERTY LOCATED ON THE SOUTH SIDE OF CRONDALL LANE, 468' EAST OF THE CENTERLINE OF OWINGS MILLS BLVD. (3717 CRONDALL LANE)  
4TH ELECTION DISTRICT  
3RD COUNCILMANIC DISTRICT

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY

CG Doc. No. 77

Folio No. 341

File No. 90-CG-741

DANIEL G. SCHUSTER, INC., ET AL/  
PLAINTIFFS, CASE NOS. CBA-89-124, 89-464-A & 89-506-SPH

SUPPLEMENTAL RECORD OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett and John G. Disney, constituting the County Board of Appeals of Baltimore County, and he with supplement, with the consent of all parties through their Counsel, the previously filed extract with the following entries which documents were filed in the Circuit Court on March 23, 1990, Case No. 90-CG-741:

Memorandum to the Zoning Commissioner (89-464-A)  
Petitioner Schuster's Responsive Memorandum (89-464-A)  
Memorandum of Law of Cronridge Investors, et al (89-506-SPH)  
Reply Memorandum of Cronridge Investors, et al (89-506-SPH)

Respectfully submitted,  
Linda Lee M. Kueymaul  
Linda Lee M. Kueymaul, Legal Secretary,  
County Board of Appeals, Room 315, County  
Office Building, 111 W. Chesapeake Avenue,  
Towson, Maryland 21204 (301) 887-3180

cc: Joseph C. Wich, Jr., Esquire Robert A. Hoffman, Esquire  
Judith A. Arnold, Esquire Cronridge Investors, Inc., et al  
Julius W. Lichter, Esquire Howard L. Alderman, Jr., Esquire  
Daniel G. Schuster

CB of A Affirmed 8/29/90 (J. Wm. R. Buchanan, Jr.)

IN THE MATTER OF DANIEL G. SCHUSTER, INC./JOSEPH L. CARDINALE AND CRONRIDGE INVESTORS, ET AL, PROPERTY LOCATED ON SOUTH SIDE OF CRONDALL LANE, 468' EAST OF C/L OF OWINGS MILLS BOULEVARD (3717 CRONDALL LANE)

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY

Case No. 90CG741

OPINION

This is an appeal from a decision of the County Board of Appeals of Baltimore County concerning the Opinion and Order of the Board on February 5, 1990 denying the Appellants' Motion for Special Hearing in Case No. 89-506-SPH, granting the Petition for Variances in Case No. 89-464-A, and affirming the County Review Group's approval of the Appellee Schuster's development plan in Case No. CBA-89-124. The subject property is located in Baltimore County at 3717 Crondall Lane, Owings Mills, Maryland.

On July 17, 1990 counsel for the parties were heard in open court and after reading the transcripts, legal memoranda, and reviewing the exhibits submitted by both parties, and in examining the conclusion reached by the Board upon the facts in this case, the Court cannot find

FILED 8/29/90

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STANDARD BUSINESS ALPHABET  
8/29/90

that the Board was erroneous in the interpretation and finding of fact, and the conclusion from the facts, nor the application of the law to facts, as it had before it evidence legally sufficient to support its decision.

Therefore, the County Board of Appeals of Baltimore County is AFFIRMED.

William R. Buchanan, Jr.  
Judge

August 28, 1990

IN THE MATTER OF DANIEL G. SCHUSTER, INC./JOSEPH L. CARDINALE AND CRONRIDGE INVESTORS, et al, PROPERTY LOCATED ON SOUTH SIDE OF CRONDALL LANE, 468' EAST OF C/L OF OWINGS MILLS BOULEVARD (3717 CRONDALL LANE)

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY

Case No. 90 CG 741 77/341

County Board of Appeals of Baltimore County, Case Nos. CBA-89-124, 89-464-A, and 89-506-SPH

APPELLANTS' RULE B 12 MEMORANDUM

Cronridge Investors, Owings Mills III General Partnership, Crondall Lane Limited Partnership, Owings Mills Commerce Centre Limited Partnership, Seven Crondall Associates Limited Partnership, Eight Crondall Associates Limited Partnership, and Nine Crondall Associates Limited Partnership (collectively, the "Appellants") are all owners of property either in or adjacent to The Business Center at Owings Mills, a business park on the north side of Crondall Lane, just east of the property at 3717 Crondall Lane that is the subject of this appeal (the "Subject Property"). They seek review here of the February 5, 1990, Opinion and Order of the County Board of Appeals of Baltimore County (the "Board"), in which the Board: (1) denied the Appellants' Petition for Special Hearing (Case No. 89-506-SPH); (2) granted a Petition for Variances filed by Joseph L. Cardinale and Appellee Daniel G. Schuster, Inc. ("Schuster"), owner and lessee respectively of the Subject Property (Case No. 89-464-A); and (3) affirmed the

April 6, 1989, action of the County Review Group (the "CRG") in approving Appellee Schuster's plan for the development of the Subject Property (Case No. CBA-89-124).<sup>1</sup> All of the cases involved in the Board's challenged Opinion and Order relate to Appellee Schuster's proposed location on the Subject Property of a concrete batching plant, with an accompanying warehouse and offices.

The Subject Property is zoned ML (Manufacturing, Light),<sup>2</sup> and it is the Appellants' primary contention here, as it was before the Deputy Zoning Commissioner and the Board below, that a concrete batching plant is a use not permitted, either by right or by special exception, and is therefore prohibited, as a principal use in an ML zone. A concrete batching plant, being an industrial or manufacturing use not specifically listed in the Baltimore County Zoning Regulations ("BCZR"), is

<sup>1</sup>In taking these three actions, the Board further imposed four numbered conditions or restrictions. Because the Appellants believe that the Board erred in each of its three actions, they will not address the restrictions in this Memorandum. However, they note that the Board's second restriction is imprecisely worded and could be confusing. This restriction provides that "[a] minimum distance of 50 feet within each side of the entrance to the property shall be kept free of debris..." (emphasis added). The Board evidently meant to require that an area extending at least 50 feet from each side of the entrance be kept clean.

<sup>2</sup>The Subject Property lies within the IM (Industrial, Major) zoning district, but this district designation does not affect, in any way that is pertinent here, the uses to which the property may be put. Section 259.1 of the Baltimore County Zoning Regulations states: "In any district, the use ... regulations applicable in the zone upon which the district is superimposed shall govern except as may be specifically provided otherwise." The only zoning provisions that provide specifically for a change in permitted use for land lying within an IM district relate to auxiliary retail, service, or semi-industrial uses. See BCZR, §§259.2.H, 253.1.C, and 253.2.B.

permitted only in the more intense MH (Manufacturing, Heavy) zone, under the catchall in §256.3 of the BCZR ("Any other industrial or manufacturing use..."). For this reason, the Board's Opinion and Order are clearly erroneous as a matter of law, and this Court should reverse the Board's Order, grant the Appellants' Motion for Special Hearing, deny the Cardinale/Schuster Petition for Variances, and invalidate the CRG's approval of Schuster's development plan.

I. The Determinative Issue in This Case Is a Pure Issue of Statutory Construction on Which the Court Need Not Defer to the Board or to Administrative Interpretations.

The Board clearly and correctly acknowledged in its Opinion below that "[t]he interpretation of B.C.Z.R. Section 253.1.A.9 is the crux of the issue before this Board."

Opinion, page 3. In a recent Baltimore County case, in which the Board's interpretation of another section of the Zoning Regulations was involved, the Court of Appeals of Maryland reiterated the applicable standard of review:

[T]he order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency's conclusions reasonably may be based upon the facts proven. ... But a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law. ... The issues with which we are concerned in this case present purely legal questions, such as the proper interpretation of §417 of the BCZR....

People's Counsel for Baltimore County v. Maryland Marine Manufacturing Co., 316 Md. 491, 496-97, 560 A.2d 32 (July 6, 1989) (citations omitted). Accordingly, this Court is bound to exercise its own legal judgment in construing BCZR



develop a concrete-production facility, office, and warehouse. Prior to initiating the formal procedure, Schuster, through his consultants, verified that concrete production facilities were a permitted as of right use in the ML zone. Such procedures included the submitting of a development plan to the County Review Group ("CRG") and the filing of a Petition for Variances from certain requirements of the zoning regulations. On February 2, 1989, the CRG held its first hearing on the development plan, at which time the Protestants had the opportunity to be heard and were heard. At that time, the CRG hearing was continued in order to allow Schuster an opportunity to provide additional information requested by County Agencies.

Later in February, Protestants instituted formal legal proceedings against Schuster, seeking permanent injunctive relief in an attempt to deny Schuster the permitted use of the subject premises. On February 17, 1989, at the continued CRG hearing, Protestants, through their counsel, raised issues inclusive of the issue as to whether concrete production is a permitted use in the ML-IM zone, as well as other bald and unsupported factual issues. Based on these alleged issues, the CRG meeting was again continued until April 6, 1989.

On April 6, 1989, with the full support of all governmental agencies inclusive of the Office of Planning and Zoning, the CRG gave final approval for the development plan for the concrete

production facility. CRG approval could not have been given if the Office of Planning and Zoning had advised that the proposed use was not permitted in a M.L. Zone. Additionally, Protestants have filed an appeal to the Board of Appeals of the CRG approval and filed a Request for Special Hearing before the Zoning Commissioner for Baltimore County. This Memorandum has been submitted following the hearing before the Deputy Zoning Commissioner on June 13, 1989.

While the land area leased with the option to purchase by Schuster comprises 7.23 acres, the actual developable area is 3.19 acres due to the substantial land area located within the flood plain. This severe constraint required the filing of the Petition for Variances on March 3, 1989. This diminution creates the practical difficulty that unreasonably prevents the use of the property for the permitted purpose. The site design and location of structures have been planned to not only satisfy the operational factors for such a facility, but also to provide and implement excellent controls to maintain superior environmental conditions, all of which were evaluated by County agencies pursuant to the CRG review. The testimony and evidence before you graphically described the operational features and their resultant enhancement of conditions for the effective operation of the concrete production business to be conducted, (i.e., indoor concrete manufacture, minimal exterior storage of materials, reclamation of

materials to be re-used on site, truck undercarriage washing, barrier walls, interior storage and repair of trucks, proximate location of exterior stored material to the plant, site maintenance equipment and plan for implementing same, etc.) The variances sought would thereby allow the spirit of the law to be observed and the public safety and welfare to be served.

The testimony and evidence also revealed that Schuster is a responsible business person at his existing facility at 52 New Plant Court and that the measures to which he and the new facility will be bound are in excess of the requirements of the regulations.

#### ARGUMENT I

##### CONCRETE PRODUCTION IS A USE PERMITTED AS OF RIGHT WITHIN THE ML ZONE

The 1987 Baltimore County Zoning Regulations (BCZR), §253.1(A)(9), permit "concrete-products manufacture, including the manufacture of concrete blocks or cinder blocks" as a use permitted as of right within ML zones. The testimony revealed that prior to initiating the process of plan and approval, Mr. Tom Hoff verified the use of a concrete batch plant with the Zoning Supervisor confirming a letter opinion stating that concrete production is permitted as of right in the ML zone under §253.1(A)(9). (See Petitioner's Exhibit No. 1). The County determined that concrete production is a use permitted as of right in the ML zone. The CRG also concluded that Schuster's use is permitted in the ML zone and

granted final approval for Schuster's intended use. Based on this, Schuster relied upon the clear affirmation given by the Zoning Supervisor.

Protestants suggest a contorted interpretation of the BCZR and allege that concrete production is not a permitted use in ML zones, which is in sharp contrast to the express language of §253.1(A)(9). Anticipating potential differences of interpretation for non-expressly defined terms, the County Council promulgated, within the zoning regulations, §101 in an effort to deal with any controversies that might arise.

Section 101 of the BCZR states that all terms not defined in the zoning regulations are to be interpreted according to the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged (Webster's Dictionary). A statute must be construed as a whole, or in its entirety, and the legislative intention is to be gathered from the entire statute rather than from any one part. *Lilly v. Jones*, 158 Md. 260, 148 A.2d 434 (1929); *Renshaw v. Grace*, 155 Md. 294, 142 A.99 (1928). Therefore, the terms stated in the ML zoning regulations which are not defined in the regulation are to be interpreted as defined in Webster's Dictionary. The appropriate and legislatively mandated definitions for "product" and "manufacture" confirm that concrete production falls within the confines of the uses permitted as of

right under §253.1(A)(9).

Webster's Dictionary defines "product" as "something produced by physical labor or intellectual effort", or "a substance produced from one or more other substances as a result of a chemical change." From this definition it is clear that concrete is a product since it is produced from one or more other substances as a result of a chemical change, i.e., concrete is the product resulting from the combination of cement, sand, water and stone.

Additionally, "manufacture" is defined in Webster's Dictionary as "something made from raw materials by hand or by machinery." Since concrete is a product, as shown above, and is made by hand or machinery, it must be deemed to be a manufactured product.

Since concrete is indeed a manufactured product, no genuine controversy should exist as to whether concrete production is permitted as of right in ML zones. Instead, Protestants allege, through the testimony of their expert witness, Mr. Fitzsimon, that the term product necessarily requires the element of possessing form. If this definition is to be accepted, it would follow that a concrete block would not be considered a final product until it becomes part of a foundation. Similarly, gasoline is not a product once it is refined from petroleum. However, gasoline has no form.

Obviously, such a contrived and narrow definition of the term "product" is a non-sequitur. Moreover, such a definition is not found within the zoning regulations, and is contrary to the

definition stated in Webster's Dictionary. A statute must be construed in a manner which renders the statute whole and harmonious. *Schwetzer v. Brewe*, 280 Md. 430, 374 A.2d 347 (1977); *Rafferty v. Comptroller of Treasury*, 228 Md. 153, 178 A.2d 896 (1962). Therefore, Protestants' attempt to formulate new definitions of the terms in the BCZR is inconsistent with the interpretive mechanism set forth in §101 of the BCZR.

#### ARGUMENT II

##### CONCRETE PRODUCTION IS ADDITIONALLY A USE PERMITTED AS OF RIGHT IN A ML ZONE PURSUANT TO §253.1(A)(54) OF THE BCZR.

Notwithstanding the fact that concrete production is clearly permitted as of right pursuant to §253.1(A)(9), concrete production is additionally permitted as of right under §253.1(A)(54) of the BCZR. Section 253.1(A)(54) allows for "other manufacture of articles of merchandise made from materials permitted to be used and made by processes permitted to be employed in the production activities more specifically listed above". Thus, §253.1(a)(54) was included in the zoning regulations because the County Council realized that it would be impossible to specifically enumerate every use which was permitted as of right in the ML zone. The language of §253.1(A)(54) enables uses which are equal in intensity to be permitted as of right in the ML zone. Concrete production uses the same materials, processes and production activities that are involved in the uses specifically identified as uses permitted

as of right in §253.1(A). The only words that need to be defined in order to apply the terms of BCZR §253.1(A)(54) are the words "merchandise" and "article." Webster's Dictionary defines "merchandise" as "the commodities or goods that are bought and sold in business: the wares of commerce." "Article" is defined as a "thing of a particular class or kind as distinct from a thing of another class or kind." Thus, concrete is an article of merchandise permitted to be manufactured as of right under §253.1(A)(54). Any other interpretation of BCZR §253.1(A)(54) would violate the express provisions of the BCZR regarding the interpretation of terms undefined elsewhere in the BCZR.

#### ARGUMENT III

##### CONCRETE PRODUCTION IS CONSISTENT WITH OTHER USES PERMITTED AS OF RIGHT IN THE ML ZONE.

Only those uses permitted by zoning regulations and being carried on as of right or by special exception are permitted. *Kowalski v. Lamar*, 25 Md. App. 493, 334 A.2d 536 (1975). Uses permitted as of right in the ML zone pursuant to §§253.1(A)(9), (54) and 253.1(E) including but not limited to uses such as airplane assembly, automobile assembly, controlled excavations, bus terminals, heliports, helistops, lumber yards and railroads, among others. Such uses are intensive, and, because they comprise relatively intense uses, they have been grouped together within the

ML zone. Simply because of the nature of the use, more intense traffic and environmental factors are considered and are managed and regulated by the Development Regulations.

Protestants allege that concrete production is an intensive use which should not be permitted in an ML zone. Yet, all of the uses in the ML zones are intense. The ML zone was meant to sustain industry of a more intense caliber than that of MR. In fact, pursuant to §253.1(E) of the BCZR, a combination of the uses permitted as of right in ML zones constitute a use permitted as of right. Thus, §253.1(E) permits a compounding of intensive uses. One property could be used, as of right, as a lumberyard, automobile and airplane assembly plant in conjunction with any of the other uses permitted as of right under §253.1(A)-(D). With such intense uses permitted as of right in the ML zone, certainly concrete production fits appropriately within its boundaries.

The testimony and evidence revealed that Schuster has taken precautions which further minimize the effect of the permitted use. The majority of Schuster's activities occur inside the plant facility, while other such operations, as well as permitted uses such as bus terminals, railroads and helistops, occur outside where their intensive nature, while permitted as of right, have impact upon neighbors. Other precautions taken by Schuster include the installation of settling structures (reclamation facility) which filter the excess concrete mixture into its various components



*85-144*

PETITIONER'S EXHIBIT #A

11/16/KS

JAN 10 1965  
REC-7-174

TOWSON  
REAL ESTATE APPRAISAL  
50 EAST BAY  
TOWSON, MARYLAND 21204  
MUESELSIEB

W HARRY HEROLD JR., P.E.  
CHARLES & STARK F.L.  
FRANCIS W. TROUBEN JR., P.E.  
FRED L. TROUBEN JR., P.E.  
J. STRONG SMITH, F.E.  
DONALD C. CHAMBERS, F.E.  
CHARLES A. STARK F.L.  
ROBERT S. MADOLE  
PASCUAL R. CHARGO

GEORGE WILLIAM STEPHENS, JR.  
AND ASSOCIATES, INC.  
CONSULTING ENGINEERS

GEORGE WILLIAM STEPHENS, JR.  
(1900-1992)

JAN 10 1965

REL. 1/10  
RECEIVED AND INDEXED IN  
FILE NO. MARYLAND STATE  
JOB 374 FILE  
DATE JAN 10 1965

LEONARD A. PARSONS P.E.  
WILSON JOHNSON P.E. F.I.C.  
BRADLEY J. KING P.E.  
WATKINS & GORDON ARCHITECTS P.L.

January 17, 1965

**RECEIVED**

JAN 31 1965

Mr. Arnold Jablon, Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Attention: Mr. James E. Dyer, Zoning Administrator

GEO. WM. STEP'  
ASSOCIATES.

Re: Concrete Batching Plants  
in the IN Zone

Gentlemen,

A client of our firm is considering the installation of a Concrete batching plant.

The plant would consist of machinery which places the ingredients in a concrete truck which mixes the ingredients and delivers the concrete to another site. Storage of the ingredients - cement, stone and sand is also involved.

Section 253.1.A.9 of the Zoning Regulations indicates that "concrete products manufacture" is permitted use in an MC zone. It is my understanding that a concrete batching plant as described above is also permitted under this sub-section. I also understand that the superimposing of an - IN district would not affect this consideration.

We will greatly appreciate your confirmation of the foregoing.

Best Regards,  
GEORGE WILLIAM STEPHENS, JR.  
AND ASSOCIATES, INC.

J. Strong Smith, F.E.  
Chief of Planning and  
Property Analysis

January 31, 1965

Subject to compliance with all other height and area regulations, the above use is permitted in the M.L. Zone.

*[Signature]*  
THOMAS E. DYER

\*  
JSS:klp

[illegible]



§253.1.A.9 and "is under no constraints in reversing [the Board's] decision" in that regard.

Likewise, the Court is not bound to defer to the construction of §253.1.A.9 in routine or informal action by the County's Zoning Supervisor, the CRG, or the Zoning Office.<sup>3</sup> While courts accord some weight to the construction of legislation by administrative officials charged with implementing that legislation if the proper interpretation is in doubt, statutory construction is ultimately a function of the courts. Supervisor of Assessments v. Chase Associates, 306 Md. 568, 574, 510 A.2d 568 (1986), and an administrative interpretation contrary to the clear and unambiguous meaning of a statute will not be given effect. State Farm Mutual Automobile Insurance Co. v. Maryland Automobile Insurance Fund, 277 Md. 602, 606, 356 A.2d 560 (1976).

<sup>3</sup>Appellee Schuster relied to some extent before the Deputy Zoning Commissioner and the Board below on the Zoning Supervisor's handwritten note on a January 17, 1985, letter (Appellee's Exhibit 3). The Appellants pointed out that this two-line response to Appellee's engineer's request for confirmation that a concrete batching plant was permitted in an ML zone was issued within two weeks of the request, evidently without the Zoning Supervisor having received any detailed information concerning the nature of the proposed use, and certainly without any notice to the public or any opportunity for argument to the contrary. In any event, the Zoning Supervisor's 1985 "opinion" was robbed of any force or effect by the later, June 12, 1987, formal Opinion and Order of the Deputy Zoning Commissioner in Case No. 87-448-A (Appellee's Exhibit 4). That later Opinion, rendered after the Deputy Zoning Commissioner had been apprised of Appellee's Exhibit 3, expressly left open the question of whether a concrete batching plant would be permitted as a principal use in an ML zone. In light of this action, taken by the Deputy Zoning Commissioner when the question now before this Court was specifically raised and acknowledged, CRG approvals or informal assurances granted when the question was not specifically raised are hardly persuasive.

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II. The Board's Action Below Was Premised on Its Misconstruction of BCZR, §253.1.A.9; That Section Does Not Permit a Concrete Batching Plant in the ML Zone.

Appellee Schuster directed most of its argument in the proceedings below toward convincing the Deputy Zoning Commissioner and the Board that the concrete batching plant it proposes will fall within the scope of §253.1.A.9 of the BCZR, which permits in the ML zone, as a matter of right, "concrete-products manufacture, including manufacture of concrete blocks or cinder blocks". The Appellants insist that this section, viewed in context, as it must be, Haskell v. Caray, 294 Md. 550, 556, 451 A.2d 658 (1982), cannot properly be read to authorize the establishment in an ML zone of a facility that produces unformed, wet concrete as an end product. Rather, §253.1.A.9, properly construed, authorizes the establishment of a plant that uses concrete as a basic raw material to produce formed and marketable concrete products in the nature of concrete blocks or cinder blocks.<sup>4</sup>

Examination of §253.1.A (a copy of which is attached to this Memorandum as Exhibit A) will readily show that

<sup>4</sup>Appellee Schuster devoted a great deal of energy below to refuting supposed arguments that are not now and never have been made by the Appellants. Thus, the Appellant do not contend that ready-mix concrete is not a "product"; nor do they contend that it is not "manufactured", or that it is not a "concrete product" because it is in an unhardened, rather than a hardened, state. (For this reason, Policy BM-23 on "U-Cast Concrete Sales", which states that the Zoning Commissioner will consider very-small-scale concrete batching operations to constitute "manufacturing a product" and that to be permissible only in manufacturing zones, is not contrary to the Appellants' position here.)

5

Subparagraph 9 is parallel in its grammatical construction to Subparagraphs 7, 10, 16, 17, 18, 19, 22, 28, 30, 35, 38, 45, 48, 51, and 52. In each of these cases, the Zoning Regulations set out a hyphenated word beginning with the name of a raw material (whether or not that "raw material" may itself be a manufactured substance) and ending with "products"; this compound word modifies the following noun, "manufacture".<sup>5</sup> What each of these subparagraphs permits, the Appellants submit, is a facility involving light manufacturing and assembly processes in the conversion of the named raw material into finished products that are clearly recognizable as having that raw material as their primary component. This reading is reinforced by the examples expressly stated in §253.1.A.9; concrete products are items similar in nature to concrete blocks or cinder blocks.

Subparagraph 9 and the other subparagraphs mentioned in the preceding paragraph of this Memorandum can be contrasted with Subparagraphs 5, 11, 12, 23, 25, 26, 31, 32, 36, 44, and 49 of §253.1.A. These latter subparagraphs again share a common grammatical construction, but one that is different from the construction of the subparagraphs mentioned in the preceding paragraph. In the latter subparagraphs, the noun "manufacture" is preceded by a single or compound modifier not

<sup>5</sup>Although there is no discussion of the point in Webster's Third New International Dictionary, unabridged (1981), Webster's New World Dictionary (2d college ed. 1980), p. 1683, states that a hyphen is used between parts of a compound modifier preceding a noun, except when the compound includes an adverb ending in "ly".

6

containing the word "products". In these instances, the modifier is itself the name of a finished product, such as candy, ice, jewelry, musical-instruments, or toys. What each of these subparagraphs permits is a facility involving light manufacturing and assembly processes in the production of this named end product.

Had the drafters of §253.1.A intended to authorize the establishment in the ML zone of facilities for the production of concrete as an end product, they would certainly have used a consistent grammatical construction and have listed "concrete manufacture" in that section. They did not do so.<sup>6</sup> The drafters of §253.1.A clearly had no more intention by Subparagraph 9 to authorize a concrete batching plant than they had by Subparagraph 28 ("Leather-products manufacture or processing...") to authorize a tannery, by Subparagraph 52 ("Wood-products manufacture or processing...") to authorize a sawmill, or by Subparagraph 53 ("Wrought-iron products manufacture") to authorize a wrought-iron smelting plant.<sup>7</sup>

<sup>6</sup>By way of contrast, §256.2 of the BCZR lists "bituminous concrete mixing plant" as a use that is permitted as a matter of right in the MH zone, as long as the plant is located at least 300 feet from any residence zone or 200 feet from any business zone. The unmistakable listing of one type of concrete mixing or batching plant in the Zoning Regulations suggests that, if the County Council had intended to give express permission for another type of concrete mixing plant, it would have made its intention plain. The fact that it did not do so indicates that the County Council meant for concrete mixing plants other than bituminous plants to fall within the catchall in §256.3.

<sup>7</sup>Although §253.1.A.53 is not entirely consistent in its construction with Subparagraph 9 and the other subparagraphs mentioned at the top of page 6, in that it does not include a hyphen

7

The Board below acknowledged that the Appellants' arguments concerning the proper interpretation of §253.1.A.9 were well-reasoned. Likewise, the Board acknowledged that it was bound to consider §253.1.A.9 in context. Nevertheless, the Board invoked principles of statutory construction demanding the avoidance, whenever possible, of results that are unreasonable, illogical, or inconsistent with common sense. The Board said that it was applying its "collective common sense" in deciding that §253.1.A.9 permits a concrete batching plant in an ML zone. Opinion, page 5.

It is extremely difficult to refute a conclusion that purports to be based on "common sense". Appellants' expert witness, Neal FitzSimons, invoked "common sense" in support of a construction of §253.1.A.9 directly contrary to the Board's. Transcript of October 19, 1989, hearing, page 166.<sup>8</sup> The only way that this Court can responsibly evaluate either construction is to examine the reasoning (beyond the conclusory invocation of "common sense") given in its support.

The Board's Opinion reveals the Board's reasoning by stating that "the mere evaporation of water from the unformed concrete [produced by a concrete batching plant] would result

between the initially named raw material and the word "products" (the hyphen appears instead between the two words that together constitute the name of the raw material). Subparagraph 53 was undoubtedly intended to be construed in the same manner as the others.

<sup>8</sup>References to pages of the October 19, 1989, transcript will hereafter be made in the following form: T.1, T.2, and so on.

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in a hardened, finished product.<sup>9</sup> We do not believe that the Legislature intended to so narrowly distinguish these uses." (Opinion, page 5; footnote added.) Thus, the Board focused on what it saw as the closely similar nature of the end products of a concrete batching plant and a concrete products plant, and it hypothesized that the County Council could not have intended to distinguish these uses.

On the other hand, Mr. FitzSimons, who had just testified at length as to the many operational differences between a concrete batching plant and a concrete products plant, and as to the wide variance in their respective impacts on their surroundings, focused on the analogy between §253.1.A.9 and §253.1.A.53 (permitting "wrought-iron products manufacture" in the ML zone). T.66. He thought it evident that the latter section did not authorize the production of wrought iron itself, and therefore he concluded that a common sense reading of §253.1.A.9 was that it did not authorize the production of concrete itself.

The Appellants submit that the Board's focus on similarity of end products was misplaced and that Mr. FitzSimons's description of divergent operations and neighborhood impacts was more on the mark. To the extent that the true intention of the County Council can be ascertained, the Appellants suggest that it must be derived from the words of §253.1.A.9,

<sup>9</sup>In fact, it would result in a hardened, unformed pile of concrete, which is hardly a marketable product.

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viewed within the context of §253.1.A.1 in particular and the manufacturing sections of the BCZR in general. The BCZR does not, of course, differentiate between manufacturing uses based on the likeness of their end products, but on the nature and intensity of their operational characteristics. The noise, dust, cement silo height, and heavy truck traffic customarily incident to concrete batching plants differentiates them from the kinds of light manufacturing uses for which the ML zone is designed. These features make a concrete batching plant more akin to the processing of sand and gravel, or to the crushing and processing of stone, permitted only in the MH zone. BCZR, §256.2. Accordingly, a proper construction of §253.1.A.9 is that it does not authorize Appellee Schuster to establish a concrete batching plant on the Subject Property.

III. A Concrete Batching Plant Is Prohibited as a Principal Use in the ML Zone.

Counsel for Appellee Schuster also suggested below, as a secondary argument, that a concrete batching plant is permitted in the ML zone under BCZR, §253.1.A.54 ("Other manufacture of articles of merchandise made from materials permitted to be used and made by processes permitted to be employed in the production activities more specifically listed above") or §253.1.E ("Combinations of the uses listed above"). These arguments, which the Board did not reach, are equally lacking in merit.

There was no credible evidence before the Board to establish that a concrete batching plant employs the same

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materials and processes as any use listed in §253.1.A. Indeed, the only listed use on which there was any evidence whatsoever, the manufacture of concrete products such as concrete blocks, was described in detail and contrasted point by point with a concrete batching plant by Appellants' expert witness, Mr. FitzSimons. T.149-57. Mr. FitzSimons is a civil engineer with extensive knowledge and experience concerning concrete and the concrete industry. See Appellants' Exhibit 4. He noted that the marketable product of a concrete batching plant is unformed, wet concrete or a combination of ingredients that can be mixed with water to create unformed, wet concrete. (Appellee's witness, Robert Armstrong, described the end product of a concrete batching plant as "unhardened Portland cement concrete". T.215.) By way of contrast, a concrete block or other concrete products plant manufactures formed and finished, marketable products (such as concrete blocks, pre-cast concrete slabs, curb stops, lawn ornaments, and so on) using wet concrete as a basic raw material.

Mr. FitzSimons testified that "concrete-products manufactur[ing]" operations and concrete batching plants customarily have distinct characteristics in terms of the height and physical appearance of plant buildings, the type and pattern of truck traffic generated, the nature of aggregate storage, and the amount of noise and dust generated. His testimony established that the operations involved in a

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RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER  
5/8 Crondall Lane, 468' E of C/L  
of Owings Mills Blvd. (3717 : OF BALTIMORE COUNTY  
Crondall Lane), 4th Election  
Dist.; 3rd Councilmanic Dist. :  
CRONRIDGE INVESTORS, INC., : Case No. 89-506-SPH  
et al., Petitioners

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

RECEIVED  
MAY 24 1989  
ZONING OFFICE

I HEREBY CERTIFY that on this 23rd day of May, 1989, a copy of the foregoing Entry of Appearance was mailed to John B. Howard, Esquire, 210 Allegheny Ave., Towson, MD 21204, Attorney for Petitioners.

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 304, County Office Building  
Towson, Maryland 21204  
887-2188

PETITION FOR SPECIAL HEARING  
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 89-506-SPH

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve or not approve a concrete batching plant as a principal use in an ML zone as requested in zoning case no. 89-464-A - aam

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: Petitioners:  
(Type or Print Name) See Attached List  
(Type or Print Name)  
Signature Signature  
Address (Type or Print Name)  
City and State Signature  
Attorney for Petitioner:  
John B. Howard, Esquire  
(Type or Print Name) Address Phone No.  
Signature City and State  
210 Allegheny Avenue  
Address  
Towson, Maryland 21204 John B. Howard, Esquire  
City and State Name  
Towson, Maryland 21204 823-4111  
Attorney's Telephone No.: 823-4111 Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 24th day of May, 1989, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 13th day of June, 1989, at 9:30 o'clock P.M.

J. Robert Haines  
Zoning Commissioner of Baltimore County

Z.C.O.-No. 1 BLITZ  
Filed BY JLL on 5/13/89  
my time only  
Duration 2 DAYS. - G.WEN SEC 100.4

CRONRIDGE INVESTORS

By: Edward A. St. John, General Partner  
5270 Executive Drive  
Catonsville, Maryland 21228  
788-0100

OWINGS MILLS III GENERAL PARTNERSHIP

By: Edward A. St. John, General Partner  
5270 Executive Drive  
Catonsville, Maryland 21228  
Lot (5A)  
788-0100

CRONDALL LANE LIMITED PARTNERSHIP

By: JAMES F. KNOTT DEVELOPMENT CORP.,  
General Partner  
By: James F. Knott, President  
Suite 203  
110 West Road  
Towson, Maryland 21204  
321-6436

OWINGS MILLS COMMERCE CENTRE LIMITED PARTNERSHIP

By: CONTINENTAL REALTY INVESTORS CORP.,  
General Partner  
By: Mark L. Levy, Vice President  
17 W. Pennsylvania Avenue  
Towson, Maryland 21204  
321-1860

SEVEN CRONDALL ASSOCIATES LIMITED PARTNERSHIP

By: RIPARIUS DEVELOPMENT CORP.,  
General Partner  
By: James K. Flannery, Jr., President  
375 Padonia Road West  
Suite 200  
Timonium, Maryland 21093  
561-8811

EIGHT CRONDALL ASSOCIATES LIMITED PARTNERSHIP

By: RIPARIUS DEVELOPMENT CORP.,  
General Partner  
By: James K. Flannery, Jr., President  
375 Padonia Road West  
Suite 200  
Timonium, Maryland 21093  
561-8811

NINE CRONDALL ASSOCIATES LIMITED PARTNERSHIP

By: RIPARIUS DEVELOPMENT CORP.,  
General Partner  
By: James K. Flannery, Jr., President  
375 Padonia Road West  
Suite 200  
Timonium, Maryland 21093  
561-8811

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 4th Date of Posting: May 24, 1989  
Posted for: Special Hearing  
Petitioner: Cronridge Investors, Inc. et al.  
Location of property: 5/8 Crondall Lane, 468' E of C/L of Owings Mills Boulevard, 3717 Crondall Lane  
Location of Sign: In front of 3717 Crondall Lane  
Remarks: S. J. Brata  
Posted by: S. J. Brata Date of return: May 24, 1989  
Number of Signs: 1

89-506-SPH  
BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Your petition has been received and accepted for filing this 4th day of May, 1989.

J. Robert Haines  
ROBERT HAINES  
ZONING COMMISSIONER

Petitioner: Cronridge Investors Received by: James E. Dyer  
Petitioner's Attorney: John B. Howard Chairman, Zoning Plans Advisory Committee

Douglas L. Kennedy, P.E.  
William K. Woody, L.S.

KCW Consultants, Inc.  
Civil Engineers and Land Surveyors  
1777 Reisterstown Road  
Commerce Centre, Suite 175  
Baltimore, Maryland 21208

(301) 484-0894 / 484-0963

February 15, 1989

Description to Accompany Petition for Variance

3717 Crondall Lane  
Fourth Election District  
Baltimore County, Maryland

BEGINNING FOR THE SAME at a point on the South side of Crondall Lane as proposed to be widened to 60 feet wide; said point being located at the end of the two following courses from the point formed by the intersection of the centerline of Owings Mills Boulevard and the centerline of Crondall Lane as shown on Baltimore County, Department of Public Works, Bureau of Engineering Drawing No. 87-1032,

- Easterly along the centerline of Crondall Lane, 468 feet more or less and
- Southerly, 40 feet more or less.

The coordinates of said point of beginning referred to the Baltimore County Survey Control System are North 49,729.97 feet and West 46, 086.89; said point of beginning also being the Northwesternmost corner of Lot No. 1 as shown on a Plat entitled "Plat of Greenfield Property" which Plat is recorded among the Land Records of Baltimore County in Platbook E.H.K. Jr. 55, Folio 95; thence leaving said point of beginning and the South side of Crondall Lane and binding on the West side of said Lot 1 and part of the West of Lot 2 as shown on said Plat,

- South 08 degrees 49 minutes 27 seconds East 792.93 feet; thence continuing to bind on the Outline of said Lot 2 the four

- following courses,
- South 52 degrees 16 minutes 50 seconds West 356.30 feet; thence
  - South 45 degrees 05 minutes 00 seconds East 855.00 feet; thence
  - South 52 degrees 50 minutes 00 seconds East 50.00 feet and
  - North 08 degrees 49 minutes 27 seconds West 1,117.00 feet; thence leaving the Outline of said Lot 2 and running the two following courses,
  - South 81 degrees 10 minutes 33 seconds West 218.48 feet and
  - North 08 degrees 49 minutes 27 seconds West 574.65 feet to a point on the South side of Crondall Lane; thence binding on the South side of Crondall Lane,
  - South 74 degrees 34 minutes 28 seconds West 10.07 feet to the point of beginning containing 7.368 acres of land more or less.



William K. Woody  
2-15-89

CERTIFICATE OF PUBLICATION

TOWSON, MD May 30, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in the OWINGS MILLS TIMES, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on May 25, 1989.

THE JEFFERSONIAN  
OWINGS MILLS TIMES,

Publisher

NOTICE OF HEARING  
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property described herein to receive testimony and suggestions from interested parties on the proposed rezoning of the property located at 5/8 Crondall Lane, 468' E of C/L of Owings Mills Boulevard, 3717 Crondall Lane, Baltimore County, Maryland 21204, as shown on the attached plat. The hearing will be held on Tuesday, June 13, 1989 at 9:30 a.m. in Room 106, County Office Building, Towson, Maryland. The Zoning Commissioner will, however, entertain any request for a stay of the hearing or any other action taken by the Zoning Commissioner during the period for good cause shown. Such request must be in writing and received in the office of the Zoning Commissioner on or before the date of the hearing and before the hearing is held.

J. ROBERT HAINES  
Zoning Commissioner  
BALTIMORE COUNTY  
MAY 25

PO 12562  
ny 128989  
co 89-506-SPH  
puc 74.86

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 4th Date of Posting: 8-31-89  
Posted for: Special  
Petitioner: 89-464-A, Joseph K. Crandall et al - 89-506-SPH Cronridge Investors, Inc. et al.  
Location of property: 5/8 Crondall Lane, 468' E of C/L of Owings Mills Blvd. 3717 Crondall Lane  
Location of Sign: In front of 3717 Crondall Lane  
Remarks: Above Plats Combined at Zoning Level  
Posted by: S. J. Brata Date of return: 9-1-89  
Number of Signs: 1



## CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bosley Avenue  
P.O. Box 6754  
Towson, Maryland 21285-6754  
April 2, 1990

Kathy Rushton — 887-2660  
Jury Assignments—Civil  
General Settlement Conferences

Tina Campbell — 887-2661  
Non-Jury Assignments—Civil  
Special Settlement Conferences

TO: Joseph C. Wich, Jr., Esq.  
Robert A. Hoffman, Esq.  
Judith A. Arnold, Esq.  
Julius W. Lichter, Esq.  
Howard L. Alderman, Jr., Esq.  
County Board of Appeal  
Arnold Jablon, Esq.

RE: Non-Jury 90-CG-741 In the Matter of Daniel G. Schuster, Inc. ET AL vs. Cronridge Investors ET AL

HEARING DATE: Tuesday, July 17, 1990, @ 9:30 a.m.

ON THE FOLLOWING: Appeal: 1 hour

Please see the below notations.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confirm calendar. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 20 DAYS OF TRIAL should be directed to the attention of Irene Summers. POSTPONEMENTS WITHIN 20 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments Joyce Grimm-887-3497.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record in no order of satisfaction is filed prior to trial.

CASE NO. 90-CG-741

IN THE MATTER OF DANIEL G. SCHUSTER, ET AL

RECEIVED FROM THE COUNTY BOARD OF APPEALS  
EXHIBITS, BOARD'S RECORD EXTRACT & TRANSCRIPT  
FILED IN THE ABOVE-ENTITLED CASE,  
AND ZONING COMMISSIONER'S FILE & EXHIBITS.

Date: 3/23/90

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE-REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 3936

DATE 4/13/89 ACCOUNT R-01-615-000

AMOUNT \$ 89.86

RECEIVED FROM: Cronridge Investors, Inc.

FOR: P.A. 4/13/89 Hearing 89-506-SPH

8-144\*\*\*\*\*896618 2156F

VALIDATION OR SIGNATURE OF CASHIER

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3353

J. Robert Haines  
Zoning Commissioner

Date: 4/9/89

Cook, Howard, Downes & Tracy:  
210 Allegheny Avenue  
Towson, Maryland 21204

ATTN: ROBERT A. HOFFMAN, ESQ.

Re: Petition for Special Hearing  
CASE NUMBER: 89-506-SPH  
S/S Crondall Lane, 468 ft. E of c/l of Owings Mills Boulevard  
3717 Crondall Lane  
4th Election District - 3rd Councilmanic  
Petitioner(s): Cronridge Investors, Inc., et al  
HEARING SCHEDULED: TUESDAY, JUNE 13, 1989 at 9:30 a.m.

Gentlemen:  
Please be advised that \$89.86 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED  
ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before your hearing is scheduled to begin.

Please note that should you fail to return the sign and post set(s), there will be an additional \$25.00 added to the above fee for each set not returned.

Very truly yours,

J. Robert Haines

J. ROBERT HAINES  
Zoning Commissioner of  
Baltimore County

JRH:gs  
cc: File

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3353

J. Robert Haines  
Zoning Commissioner

May 9, 1989

## NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Hearing  
CASE NUMBER: 89-506-SPH  
S/S Crondall Lane, 468 ft. E of c/l of Owings Mills Boulevard  
3717 Crondall Lane  
4th Election District - 3rd Councilmanic  
Petitioner(s): Cronridge Investors, Inc., et al  
HEARING SCHEDULED: TUESDAY, JUNE 13, 1989 at 9:30 a.m.

Special Hearings Not to approve a concrete batching plant as a principal use in an M.L. zone, such use being proposed in Zoning Case Number 89-464-A.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines

J. ROBERT HAINES  
Zoning Commissioner of  
Baltimore County

cc: Robert A. Hoffman, Esq.  
Julius Lichter, Esq.  
Petitioners  
File



## County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING  
111 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
(301) 494-3180 887-3180

## NOTICE OF ASSIGNMENT

August 30, 1989

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 89-124 SCHUSTER CONCRETE  
RE: CRG Decision  
4/6/89 - Meeting of the CRG wherein the plan was approved.  
CASE NO. 89-464-A JOSEPH L. CARDINALE, ET AL  
VAR - setbacks  
CASE NO. 89-506-SPH CROWRIDGE INVESTORS, INC., ET AL  
SPH - to not approve variance requested in Zoning Case No. 89-464-A  
7/21/89 - D.Z.C.'s Order GRANTING Variance DENYING Special Hearing  
S/S of Crondall Lane,  
468' E of the c/l of Owings Mills Boulevard  
(3717 Crondall Lane)  
4th Election District; 3rd Councilmanic District

Case No. 89-124 which was scheduled for August 30, 1989 has been POSTPONED in open hearing by mutual agreement of Counsel and has been combined with Case No. 89-464-A and Case No. 89-506-SPH and has been

ASSIGNED FOR: THURSDAY, OCTOBER 19, 1989 at 10:00 a.m.

cc: John B. Howard, Esq. Counsel for Appellants/Protestants  
Robert A. Hoffman, Esq. " " "  
Judith A. Arnold, Esq. " " "  
Cronridge Investors " " "  
James F. Knott " " "  
Mark L. Levy " " "  
Edward A. St. John " " "  
James K. Flannery, Jr. " " "  
Nancy Bruno " " "  
Crondall Lane Ltd. Partnership " " "  
Seven, Eight and Nine Crondall Associates Ltd. Partnership " " "  
Julius W. Lichter, Esquire Counsel for Appellee/Developer  
Howard L. Alderman, Jr., Esq. " " "  
Daniel G. Schuster " " "  
Roff & Antonucci, Inc. " " "  
Mr. Neal Fitzsimmons " " "  
Ms. Lisa Reir " " "  
Mr. Alan Schneider " " "  
Toni Krometis " " "  
B.J. Fitzsimmons, Jr. " " "  
P. David Fields " " "  
Pat Keller " " "  
J. Robert Haines " " "  
Ann M. Nastarowicz " " "  
James E. Dyer " " "  
M. Carl Richards, Jr. " " "  
Docket Clerk - Zoning " " "  
Arnold Jablon, County Atty " " "  
Planning Director " " "  
Current Planning " " "  
Dev. Eng. Div. " " "  
Econ. Dev. Comm. " " "  
Charles C. Harwood, Jr. " " "  
Ms. Karen Rabins " " "  
Nancy West, Asst. County Atty.

## BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 31, 1989

COUNTY OFFICE BLDG.  
111 W. CHESAPEAKE AVE.  
TOWSON, MARYLAND 21204

John B. Howard, Esquire  
210 Allegheny Avenue  
Towson, MD 21204

RE: Item No. 480, Case No. 89-506-SPH  
Petitioner: Cronridge Investors, et al  
Petition for Special Hearing

Dear Mr. Howard:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WIMMERSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,

James E. Dyer, Jr.  
JAMES E. DYER  
Chairman  
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Cronridge Investors  
Owings Mills III General Partnership  
Crondall Lane Limited Partnership  
Owings Mills Commerce Centre Ltd Partnership  
Seven Crondall Associates Ltd Partnership  
Eight Crondall Associates Ltd Partnership  
Nine Crondall Associates Ltd Partnership

Baltimore County  
Fire Department  
Towson, Maryland 21204-2586  
494-4500

Paul H. Reincke  
Chief

J. Robert Haines  
Zoning Commissioner  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, MD 21204

Re: Property Owner: Petitioners: Cronridge Investors, Owings Mills III General Partnership; Crondall Lane Ltd. Part.; O.M. Comm. Cent. Ltd. Part.  
Location: W. Side Crondall Lane, 500' S of Owings Mills Blvd.

Item No.: 480 Zoning Agenda: May 16, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- ( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or \_\_\_\_\_ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- ( ) 2. A second means of vehicle access is required for the site.
- ( ) 3. The vehicle dead end condition shown at \_\_\_\_\_ EXCEEDS the maximum allowed by the Fire Department.
- ( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- ( ) 6. Site plans are approved, as drawn.
- ( ) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *Paul H. Reincke* 5/11/89  
Noted and Approved: *Paul H. Reincke*  
Special Inspection Division

/s/

## BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

J. Robert Haines,  
TO: Zoning Commissioner

Date: May 19, 1989

FROM: David Filbert

SUBJECT: ZONING ADVISORY ITEM COMMENTS CONCERNING

AIR QUALITY ASSESSMENT

Comments on Zoning Advisory Committee Meeting, Items #466 and #480 are as follows:

#466  
Property Owner: Mobil Oil Corporation  
Location: SE Corner of Hollins Ferry & Hammonds Ferry Roads  
Existing Zoning: B.L. - C.N.S.  
Proposed Zoning: Special exception for a food store with less than 5,000 square feet as a use in combination with a gasoline station.  
Area: 0.82 acre  
District: 13th Election District

This office requires that the existing gasoline storage tanks be registered with this office, in accordance with Maryland Air Quality Regulation COMAR 26.11.02. - 03 A. In addition, the tanks must be equipped with Stage I vapor recovery to control the discharge of gasoline vapors during storage tank loading. Application and more information may be obtained from this office at 887-3775.

#480-23  
Property Owner: Petitioners: Cronridge Investors; et al  
Location: West side Crondall Lane, 500' (+/-) S of Owings Mills Blvd.  
Existing Zoning: M.L.  
Proposed Zoning: Special hearing to not approve a concrete batching plant as a principal use in an M.L. Zone, such use being proposed in Zoning Case No. 89-464-A.  
Area: 7.368 Acres (+ or -)  
District: 4th Election District

The proposed concrete batch plant owned by Daniel Schuster will be subject to several Air Quality Regulations. An approved Permit to Construct must be obtained prior to the installation of the batching equipment, as per COMAR 26.11.02.03 A.



Over



Appeal Cover Letter - Case Nos. 89-464-A and 89-506-SPH  
August 23, 1989  
Page 2

cc: John B. Howard, Robert A. Hoffman, Judith A. Arnold  
Venable, Baetjer and Howard, 210 Allegheny Avenue, Towson, MD  
Cronridge Investors, 5270 Executive Drive, Catonsville, MD 21228  
Nancy Bruno, Owings Mills III General Partnership  
5270 Executive Drive, Catonsville, MD 21228  
Crondall Lane Limited Partnership, Suite 203  
110 West Road, Towson, MD 21204  
Mark Levy Owings Mills Commerce Centre Limited Partnership  
17 West Pennsylvania Avenue, Towson, MD 21204  
Seven Crondall Associates Limited Partnership  
375 Padonia Road West, Suite 200, Timonium, Maryland 21093  
Eight Crondall Associates Limited Partnership  
375 Padonia Road West, Suite 200, Timonium, Maryland 21093  
Nine Crondall Associates Limited Partnership  
375 Padonia Road West, Suite 200, Timonium, Maryland 21093  
Neal Fitzsimons, 10408 Montgomery Ave., Kensington, MD 20895  
Lisa S. Keir, P.O. Box 5402, Towson, MD 21285-5402  
Alan Schneider, Catalyst Research  
3706 Crondall Lane, Owings Mills, MD 21117  
James Flannery, Jr., Riparius Development Corporation  
375 Padonia Road W, Timonium, Maryland 21093  
Charles C. Harwood, Jr., Pembroke Development  
8156 Main Street, Ellicott City, MD 21043  
Karen Rabins, 402 Carolina Road, Towson, MD 21204  
Toni Krometis, 320 Alabama Road, Towson, MD 21204  
E. J. Fitzsimmons, Jr., 409 W. Chesapeake Ave., Towson, MD 21224  
Daniel G. Schuster, 52 New Plant Ct. Owings Mills, MD 21117  
Julius Lichter, Esquire, Levin & Gann, P.A.  
Suite 113, 305 W. Chesapeake Avenue, Towson, MD 21204

Appeal Cover Letter - Case Nos. 89-464-A and 89-506-SPH  
August 23, 1989  
Page 3

Howard Alderman, Jr. Esquire, Levin & Gann, P.A.  
Suite 113, 305 W. Chesapeake Avenue, Towson, MD 21204  
Thomas Hoff, P.O. Box 27402, Towson, MD 21285  
People's Counsel, Rm. 304, County Office Bldg., Towson, MD 21204  
File

#### APPEAL

Petition for Zoning Variance  
S/S of Crondall Lane, 468' E of the c/l of Owings Mills Boulevard  
(3717 Crondall Lane)  
4th Election District - 3rd Councilmanic District  
JOSEPH L. CARDINALE, ET AL - Petitioners  
Case No. 89-464-A

Petition for Special Hearing  
S/S Crondall Lane, 468' E of the c/l of Owings Mills Boulevard  
(3717 Crondall Lane)  
4th Election District, 3rd Councilmanic District  
CRONRIDGE INVESTORS, INC., ET AL - Petitioners

#### Copies of Case No. 89-464-A

Petition for Zoning Variance ✓  
Certificate of Posting ✓  
Certificate of Publication ✓  
Entry of Appearance of People's Counsel (None submitted)  
Zoning Plans Advisory Committee Comments ✓  
Director of Planning & Zoning Comments ✓  
Memorandum to the Zoning Commissioner ✓  
Petitioner's Schuster's Responsive Memorandum ✓

#### Copies of Case No. 89-506-SPH

Petition for Special Hearing ✓  
Description of Property ✓  
Certificate of Posting ✓  
Certificate of Publication ✓  
Entry of Appearance ✓  
Zoning Plans Advisory Committee Comments ✓  
Director of Planning & Zoning Comments (None Submitted)  
Memorandum of Law of Cronridge Investors, et al ✓  
Reply Memorandum of Cronridge Investors, et al ✓

#### Copies for both cases

Petitioner's Exhibits: 1) Plat to accompany Petition for Variances ✓  
2) Exhibit to Accompany Petition for Variances ✓  
3) Copy of Letter dated 1/17/85 ✓  
4) & 5) Photographs of site ✓

Appeal Checklist - Case Nos. 89-464-A and 89-506-SPH  
August 23, 1989  
Page 2

- 6) Final Landscape Plan ✓
- 7) Plat to accompany Petition for Variances ✓
- 8) Copy of Order - Case No. 87-464-A ✓
- 9) Sediment Control Inspection Report ✓
- 10) & 11) County Review Group Comments ✓
- 12) Bureau of Air Quality Comments ✓
- 13) Letter of Support dated 3/9/89 ✓

Deputy Zoning Commissioner's Order dated July 21, 1989 (Granted w/ Restrictions) ✓

Notice of Appeal received August 2, 1989 from John B. Howard, Robert A. Hoffman and Judith A. Arnold of Venable, Baetjer & Howard ✓

cc: John B. Howard, Robert A. Hoffman, Judith A. Arnold, Venable, Baetjer and Howard, 210 Allegheny Avenue, Towson, MD

Cronridge Investors, 5270 Executive Drive, Catonsville, MD 21228

Nancy Bruno, Owings Mills III General Partnership  
5270 Executive Drive, Catonsville, MD 21228

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Neal Fitzsimons, 10408 Montgomery Ave., Kensington, MD 20895

Lisa S. Keir, P.O. Box 5402, Towson, MD 21285-5402

Dr. Alan Schneider, Catalyst Research  
3706 Crondall Lane, Owings Mills, MD 21117

James Flannery, Jr., Riparius Development Corporation  
375 Padonia Road W, Timonium, Maryland 21093

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8156 Main Street, Ellicott City, MD 21043

Karen Rabins, 402 Carolina Road, Towson, MD 21204

Appeal Checklist - Case Nos. 89-464-A and 89-506-SPH  
August 23, 1989  
Page 3

Toni Krometis, 320 Alabama Road, Towson, MD 21204  
E. J. Fitzsimmons, Jr., 409 W. Chesapeake Ave., Towson, MD 21224  
Daniel G. Schuster, 52 New Plant Ct. Owings Mills, MD 21117  
Julius Lichter, Esquire, Levin & Gann, P.A.  
Suite 113, 305 W. Chesapeake Avenue, Towson, MD 21204  
Howard Alderman, Jr. Esquire, Levin & Gann, P.A.  
Suite 113, 305 W. Chesapeake Avenue, Towson, MD 21204  
Thomas Hoff, P.O. Box 27402, Towson, MD 21285

People's Counsel of Baltimore County  
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
J. Robert Haines, Zoning Commissioner  
Ann M. Nastrowicz, Deputy Zoning Commissioner  
James E. Dyer, Zoning Supervisor  
Docket Clerk  
*Arnold G. Gann, County Attorney*

SCHUSTER CONCRETE/JOSEPH L. CARDINALE, ET AL/  
CRONRIDGE INVESTORS, INC., AL \*CBA-89-124, 89-464-A & 89-506-SPH  
4th Election District, 3rd Councilmanic District

S/S of Crondall La., 468' E of c/l of  
Owings Mills Blvd. (3717 Crondall La.)  
VAR-setbacks; SPH-to not approve concrete batching  
plant in ML zone  
RE: CRG Decision

CBA-89-124  
April 6, 1989 CRG Meeting wherein the Plan was approved.  
May 4 Notice of appeal received from Venable, E. Baetjer & Howard on behalf of Protestants.

FOLLOW ENTRIES UNDER CASE NOS. 89-464-A & 89-506-SPH  
89-464-A & 89-506-SPH

March 22, 1989 Petition filed by Joseph L. Cardinale, et al for zoning variances - setbacks.  
May 4 Petition for Special Hearing to not approve concrete batching plan in ML zone filed by Cronridge Investors, Inc., et al.

July 21 Order of the D.Z.C. GRANTING Petition for variances w/restrictions; approving concrete plant thereby DENYING Pet. for Special Hearing.

August 2 Order for Appeal filed by Venable, Baetjer & Howard on behalf of Prot.'s.  
October 19 Hearing before the Board.

November 15 Post-Hearing Memorandums filed.  
February 5, 1990 Opinion and Order of the Board DENYING Special Hearing; GRANTING Pet. for variances with restrictions and AFFIRMING CRG.

February 23 Order for Appeal filed in CCT, BCO by Venable, Baetjer & Howard on behalf of Protestants.

February 28 Certificate of Notice sent to interested parties.  
March 5, 1990 Petition to accompany appeal filed in CCT, BCO by Venable, Baetjer & Howard.  
March 23, 1990 Transcript of testimony filed; Record of Proceedings filed in CCT, BCO.

August 29 Order of the CCT for Baltimore County (Judge William R. Buchanan, Jr.) that the CBA is AFFIRMED in denial of Petition for Special Hearing; granting of Petition for Variances; and affirmation of CRG.

September 25 Order for Appeal to the Court of Special Appeals filed by Venable, Baetjer & Howard on behalf of Protestants.

January 31, 1991 Supplemental Record of Proceedings filed in CCT referencing Memorandums filed before the Zoning Commissioner (previously submitted with extract filed in CCT on 3/23/90).

October 11 Per Curiam filed. Judgment Affirmed.  
November 12 Mandate issued.

SCHUSTER CONCRETE : BEFORE THE  
S/S Crondall Lane : COUNTY BOARD OF APPEALS  
E of Bonita Avenue :  
4th Election District : OF BALTIMORE COUNTY  
3rd Councilmanic District :  
RE: CRG Decision : Case No.: CBA-89-124

#### REQUEST FOR SUBPOENA DUCES TECUM

Madame Secretary:

Please issue a subpoena duces tecum for the following named witness and command him to appear at the continued hearing on the above-referenced matter scheduled before the County Board of Appeals of Baltimore County on Thursday, October 19, 1989 at 10:00 a.m. at the Board's Hearing Room in Room 301 of the County Office Building, Towson, Maryland, 21204:

Mr. W. Carl Richards, Jr.  
Zoning Coordinator  
Office of Planning and Zoning  
111 West Chesapeake Avenue  
Towson, Maryland 21204

The witness should also be directed to bring with him to the hearing any and all documents, plans, files and records in his custody, possession or control concerning the County Review Group approval and any related matters for the above captioned case and property.

CC-11117 01 13069

Mr. Sheriff:  
Please issue the above summons.

*Linda Kayman*  
Kathleen C. Weidenhammer, Board of Appeals

This subpoena request is made on behalf of the undersigned attorneys for the Property Owner/Petitioner, Daniel G. Schuster, Inc.

*Daniel G. Schuster*  
Howard L. Alderman, Jr.  
LEVIN & GANN, P.A.  
Suite 113  
305 West Chesapeake Avenue  
Towson, Maryland 21204  
(301) 321-0600  
Attorneys for the Property Owner/Petitioner

Dated: October 4, 1989





County Board of Appeals of Baltimore County  
OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

July 1, 1994

Robert A. Hoffman, Esquire  
VENABLE, BAETJER & HOWARD  
210 Allegheny Avenue  
Towson, MD 21204

RE: Case No. 89-464-A & 89-506-A  
SCHUSTER CONCRETE  
/JOSEPH L. CARDINALE, ET AL  
/CRONRIDGE INVESTORS, INC., ET AL

Dear Mr. Hoffman:

As no further action has been taken regarding the subject matter since the October 11, 1991 Order of the Court of Specials, we have returned the Board's copy of the subject zoning file to the office of Zoning Administration and Development Management.

Anyone interested in this case can contact the Gwen Stephens of Zoning Administration at 887-3391 upon receipt of this letter. By copy of this letter, all parties of record that may have an interest in this file have been notified.

In addition to the above referenced case, we have closed Case No. CBA-89-124 (Schuster Concrete), which file is maintained in the Board of Appeals.

Sincerely,  
*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe  
Legal Secretary

cc: Daniel G. Schuster  
Julius W. Lichter, Esquire  
Judith A. Arnold, Esquire  
Joseph C. Wich, Jr., Esquire  
People's Counsel for Baltimore County



County Board of Appeals of Baltimore County  
OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

TO: Donald T. Rascoe  
Development Management

DATE: July 1, 1994

FROM: Charlotte E. Radcliffe  
County Board of Appeals

SUBJECT: Closed Files - CBA-89-124  
SCHUSTER CONCRETE  
(CRG Decision)

Pursuant to our recent receipt of the decision of the Court of Special Appeals in the subject matter (a copy of CCT docket sheet is attached) and as no further appeals have been taken, we are closing this file.

cc: Robert A. Hoffman, Esquire  
Julius W. Lichter, Esquire  
Judith A. Arnold, Esquire  
Joseph C. Wich, Jr., Esquire  
Michael J. Moran, Asst. County Attorney  
Arnold Jablon /ZADM

Attachment

Printed with Soybean Ink  
on Recycled Paper

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Zoning Administration &  
Development Management

DATE: July 1, 1994

FROM: Charlotte E. Radcliffe  
County Board of Appeals

SUBJECT: Closed Files: Case Nos. 89-464-A & 89-506-SPH  
SCHUSTER CONCRETE /JOSEPH L. CARDINALE, ET AL  
/CRONRIDGE INVESTORS, INC., ET AL  
District 4C3

As no further appeals have been taken regarding the subject cases, we are closing the files and returning same to you herewith.

Attachment

5-2-89  
FROM THE DESK OF J. ROBERT HAINES

TO: Ann Nastarowicz  
James E. Dyer  
W. Carl Richards  
James H. Thompson

OFFICES  
J. DOWNES & TRACY  
1100 W. AVENUE  
BOX 5517

ARYLAND 21204

(301) 823-4411

(301) 823-0147

17 BROADWAY

3. BOX B

ARYLAND 21014

(301) 823-8664

(301) 879-1551

3AL NUMBER

494-9162

2, 1989

*for both parties to meet with me*  
*A. S. A. P.*  
*Hand Delivery*

J. Robert Haines  
Zoning Commissioner for Baltimore County  
County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Re: Case No.: 89-464-A  
Daniel G. Schuster, Inc., Petitioner

Dear Mr. Haines:

John Howard and I represent several property owners who are adjacent to the subject property in the referenced case and are opposed to the granting of the subject variances. They are MIE Development Company, James F. Knott Development Corporation, Riparius Development Corporation and Continental Realty, Inc., and as a group have a substantial investment in this area of Owings Mills.

I am now aware that your office scheduled the hearing in the referenced case for May 16, 1989 at 10:30 a.m. Unfortunately, Mr. Howard and I are both scheduled to be before the Board of Appeals on that same date, in a case that has been

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MAY 2 1989  
ZONING OFFICE

J. Robert Haines  
May 2, 1985  
Page 2

scheduled for some time and is anticipated will take at least one full day.

Additionally, I will be filing at the "Blitz" tomorrow a Petition for Special Hearing which questions the permissibility of the proposed use of the subject property as a concrete batching plant in an ML zone. It is respectfully submitted that your decision on the Special Hearing could be determinative of the Petition for Variances.

Therefore, because of the scheduling conflict and in the interest of judicial economy, we respectfully request that the referenced case be continued to the earliest available date following the 16th of May.

Thank you for your attention to this matter.

Yours truly,

*Robert A. Hoffman*  
Robert A. Hoffman

RAH:bw  
cc: Julius Lichter, Esquire

CAIMAN A. LEVIN  
STANFORD C. GANN  
MELVIN A. STEINBERG  
JULIUS W. LICHTER  
SIOREY WEINMAN  
ROBERT L. PELLER  
ANDREW E. SANDLER  
RANDOLPH C. KNEPPER  
MICHAEL J. KANDEL  
BRAND J. FRANK  
HOWARD L. ALDERMAN, JR.  
JUDITH A. ARNOLD  
MARC C. GANN  
MAYER E. GUTTMAN  
EDWARD B. STEINBERG  
\*ALSO ADMITTED IN DC  
\*ALSO ADMITTED IN NEW YORK

LAW OFFICES  
LEVIN & GANN  
A PROFESSIONAL ASSOCIATION  
305 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
301-3 -0600  
FAX 301-296-2801

July 11, 1989

ELLIS LEVIN (800) 396-0101  
BALTIMORE OFFICE  
900 MERCANTILE BANK & TRUST BUILDING  
2 HOPKINS PLAZA  
BALTIMORE, MARYLAND 21201  
301-536-3000  
TELECOPIER 301-625-0050  
CARROLL COUNTY OFFICE  
137 LIBERTY ROAD  
SYKEVILLE, MD 21784

Ann M. Nastarowicz, Esquire  
Deputy Zoning Commissioner  
for Baltimore County  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

RE: Schuster Concrete  
89-464-A and 89-506-SPH

Dear Ms. Nastarowicz:

As per my earlier advice, the approved CRG Plan for the subject project has been appealed by the Protestants who appeared at the time of the hearings before you in the above referenced cases. The appeal has been set for hearing before the County Board of Appeals on July 25, 1989 at 11:00 a.m. It would be most helpful, if a decision would be rendered by you in the zoning cases heard on June 13, 1989 at an early enough date so that they could be consolidated in the appeal before the County Board of Appeals on July 25, 1989.

Sincerely,

*Julius W. Lichter*  
Julius W. Lichter

JWL:lsp

VENABLE, BAETJER AND HOWARD

ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
210 ALLEGHENY AVENUE  
P.O. BOX 5517  
TOWSON, MARYLAND 21204-5517  
(301) 823-4411  
FAX (301) 823-0147

August 2, 1989

J. Robert Haines  
Zoning Commissioner for  
Baltimore County  
County Office Building, 1st Floor  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Re: Notice of Appeal  
Petitions for Special Hearing and Zoning Variance  
S/S Crondall Lane, 468' E of the c/l of Owings  
Mills Boulevard (3717 Crondall Lane)  
4th Election District - 3rd Councilmanic District  
Case Nos. 89-464-A and 89-506-SPH

Dear Mr. Haines:

Please note the appeals to the decision in the above-referenced cases by the following:

Cronridge Investors  
5720 Executive Drive  
Catonsville, Maryland 21228  
(301) 788-0100

Owings Mills Three General Partnership  
5270 Executive Drive  
Catonsville, Maryland 21228  
Lot (5a)  
(301) 788-0100

Crondall Lane Limited Partnership  
Suite 203  
110 West Road  
Towson, Maryland 21204  
(301) 321-6436

Owings Mills Commerce Center  
Limited Partnership  
17 West Pennsylvania Avenue  
Towson, Maryland 21204  
(301) 321-1860

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Baltimore County Board of Appeals  
August 1, 1989  
Page Two

Seven Crondall Associates Limited  
Partnership  
375 Padonia Road West, Suite 200  
Timonium, Maryland 21093  
(301) 561-8811

Eight Crondall Associates Limited  
Partnership  
375 Padonia Road West, Suite 200  
Timonium, Maryland 21093  
(301) 561-8811

Nine Crondall Associates Limited  
Partnership  
375 Padonia Road West, Suite 200  
Timonium, Maryland 21093  
(301) 561-8811

We have enclosed a check in the amount of \$250.00 to cover the cost of filing both appeals.

Thank you for your consideration.

Respectfully submitted,

*John B. Howard*  
John B. Howard  
*Robert A. Hoffman*  
Robert A. Hoffman  
*Judith A. Arnold*  
Judith A. Arnold  
Venable, Baetjer & Howard  
P. O. Box 5517  
Towson, Maryland 21204  
(301) 823-4411  
Attorneys for Appellants

JBH/jhr  
Enclosures  
cc: James F. Knott  
Mark L. Levy  
James W. Flannery  
Nancy Morris-Bruno  
Arthur Adler, Esquire



ATTORNEYS AT LAW

**A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION**

P.O. BOX 5517

(301) B23-4111

August 21, 1989

WATERS DIRECT NUMBER IS  
301-494-9162

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ZONING OFFICE

Dear Mr. Haines:

Cronridge Investors  
5270 Executive Drive  
Catonsville, Maryland 21228  
(301) 788-0100

Owings Mills III General Partnership  
5270 Executive Drive  
Catonsville, Maryland 21228  
Lot (5a)  
(301) 788-0100

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110 West Road  
Towson, Maryland 21204  
(301) 321-6436

Owings Mills Commerce Centre  
Limited Partnership  
17 West Pennsylvania Avenue  
Towson, Maryland 21204  
(301) 296-4800

Seven Crondall Associates Limited  
Partnership  
375 Padonia Road West, Suite 200  
Timonium, Maryland 21093  
(301) 561-8811

Eight Crondall Associates Limited  
Partnership  
375 Padonia Road West, Suite 200  
Timonium, Maryland 21093  
(301) 561-8811

Nine Crondall Associates Limited  
Partnership  
375 Padonia Road West, Suite 200  
Timonium, Maryland 21093  
(301) 561-8811

Yours Truly

Robert A Hoffman

RAH:cns

cc: James F. Knott  
Mark L. Levy  
James K. Flannery  
Nancy Norris-Bruno  
Arthur Adler, Esquire

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

<u>Karen Rabins</u>	<u>402 Carlin Rd 21204</u>
<u>Pam Kmetz</u>	<u>320 Alabaster Rd 21204</u>
<u>E J R 2 Simmons Jr</u>	<u>409 W Chesapeake Ave</u>

**PROTESTANT(S) SIGN-IN SHEET**

NAME \_\_\_\_\_

ADDRESS

- John Howard
- Rob Hoffman
- Nancy BRUNO
- MARK LEVY
- Ned FitzSimons, P.E.
- Lisa A. Kaur
- Alan J. Schneider, Gen. Manager
- James K. Flannery Jr.
- Charles C. Hawood Jr.



BEARING & DISTANCE TABLE (FLOOD PLAIN LINE)

LINE	BEARING	DISTANCE
1	N 40° 52' 55" W	50.71'
2	N 41° 25' 25" W	120.72'
3	N 30° 04' 54" W	173.52'
4	S 71° 55' 04" W	31.62'
5	N 64° 52' 12" W	23.26'
6	N 60° 57' 52" W	47.65'
7	N 91° 20' 20" W	32.02'
8	N 12° 41' 51" E	19.66'

VARIANCE FOR A BLDG. TO BLDG. SETBACK OF 42' INSTEAD OF THE REQUIRED 60'

ML-IM

WILLIAM B. BLACKBURN  
SUSAN S. CASTLEMAN  
GEORGE TILTON  
7047/266  
ACT # 04-10-048210

PROPOSED 30' WIDE INGRESS, EGRESS & UTILITY EASEMENT

PROPOSED 10' PAVEMENT SEPARATING LOT 1

400' ± TO O'WING'S MILLS BLVD.

PROPOSED 8' METER & VAULT POINT OF BEGINNING

EXISTING DWELLING

CATALYTIC RESEARCH CORP.  
6191/787  
ACT # 04-19-027610

ML-IM

CRG NOTES (CONT.)

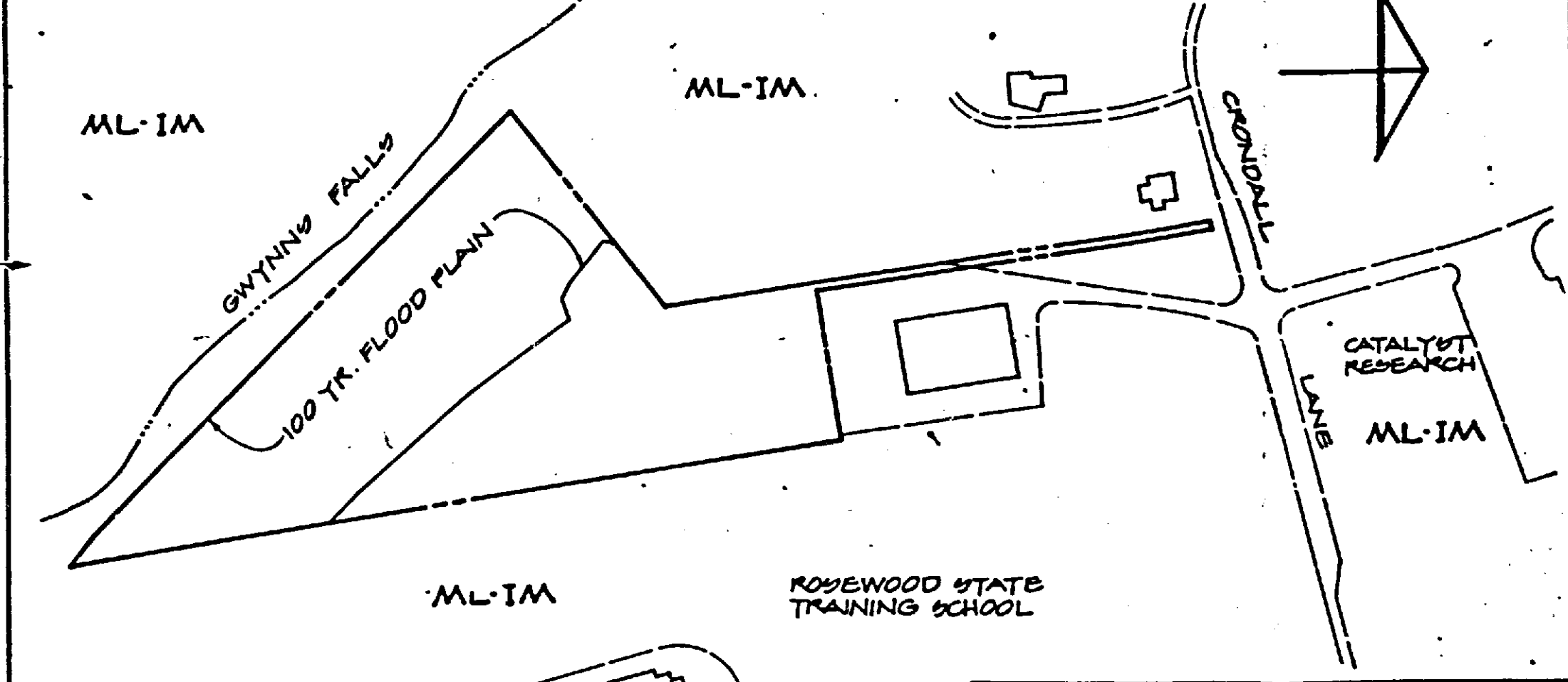
- Existing on-site sewer to be converted to public
- Proposed buildings shall be designed and constructed so as to meet the applicable provisions of the Fire Prevention Code and the NFPA 101 Life Safety Code, 1985 edition.
- Fire Flow Test is required to be conducted by the Baltimore City Water Department as close to the site as possible, specifically on Crondall Lane. Test results are to be forwarded to the office of the Fire Protection Engineer.
- Access roads shall be posted with fire lane signs along its entire length. Baltimore County Council Bill 102-74.
- All fire hydrant spacing shall be in accordance with the Baltimore County Standard Design Manual, section 2.4.4, Fire Hydrants.

**SURVEYOR'S NOTE:**  
SURVEYOR'S SEAL SHOWN HEREON IS FOR PROPERTY OUTLINE & EXISTING TOPOGRAPHIC INFORMATION ONLY.

ML-IM

THE PROPOSED DEVELOPMENT SHALL INCLUDE A MAXIMUM 3000 SF OF OFFICES, 13400 SF OF WAREHOUSE & SHOP, AND 9500 SF OF CONCRETE BATCH PLANT. FINAL DETAILS SHALL BE ESTABLISHED BY APPROVED PLANS.

VICINITY MAP  
SCALE: 1" = 200'



OWNER:  
JOSEPH L. CARDINAL  
3717 CRONDALL LANE  
OWINGS MILLS, MARYLAND 21117  
301-843-2420

APPLICANT:  
DANIEL G. SCHUSTER, INC.  
52 NEW PLANT COURT  
OWINGS MILLS, MARYLAND 21117  
301-843-9037

TOPO SURVEY NOTE:

- EXISTING CONTOURS SHOWN HEREON WERE ORIGINALLY SURVEYED ON 10/27/88.
- REVISED EXISTING CONTOURS SHOWN HEREON WERE SURVEYED ON 2/21/89.

HYDROLOGIC SOIL GROUP	SOIL TYPE AND LIMITATIONS				
	TYPE	CLASS	BUILDINGS WITH EASEMENTS	BUILDINGS WITHOUT EASEMENTS	PARKING LOTS
C	CU	COMPLEX	SEVERE, FLOODING HAZARD	SEVERE, FLOODING HAZARD	SEVERE, FLOODING HAZARD
D	GCCs	LOAM	MODERATE, SLOPE	MODERATE, SLOPE	SEVERE, SLOPE
E	GND	COMPLEX	SEVERE, HIGH WATER TABLE	MODERATE, HIGH WATER TABLE	SEVERE, HIGH WATER TABLE
B	HBBs	LOAM	SLIGHT	SLIGHT	SLIGHT
D	MBCs	LOAM	MODERATE, SLOPE	MODERATE, SLOPE	MODERATE, SLOPE

CRG NOTES

- There are no existing streams, bodies of water or springs on this site.
- There are no critical areas, archeological sites, historical buildings, endangered species habitat or hazardous materials on this site.
- There are no wetlands outside the 100 year flood plain.
- Census Tract No. 4042.02
- Watershed No. 27
- Subwatershed No. 67
- Councilmatic District No. 3
- Stormwater Management will be provided.
- This development will be served by public water and public sewer systems.
- Topography shown taken from Outline & Topographic Survey prepared by KCM Consultants, Inc. 068/1989/NOTES
- Proposed grades are schematic and are not intended for construction purposes.
- Property Deed reference: 7411/416
- Property Tax Account No. 20-00-011531.532.533
- Public Services CRG No. 00255
- Planning No.

DENSITY CALCULATIONS

Gross Acreage (entire parcel)	10.37 acres
Net Acreage	7.23 acres
(Proposed Lot 3, including 4.04 AC. 100 YR flood plain)	
Existing Zoning	ML-IM
Existing use	Vacant
Proposed use	Concrete Batch Plant, Office, & Warehouse
Proposed building sizes:	
Concrete Batch Plant	9200 SF
Office	3000 SF
Warehouse	15400 SF
Total	27600 SF
Floor Area Ratio - 22520 SF / 314939 SF	= 0.08
Parking Required:	
General Offices - 3000 SF @ 3.3/1000 SF	= 9.9 spaces
Mfg & Warehouse - 1 space/employee	= 60.0 spaces
(60 employees on the largest shift)	
Total Parking Required	= 70.0 spaces
Parking Proposed:	
(including 3 handicapped spaces)	= 74.0 spaces
Average daily trips	
Warehouse - 22,600 SF @ 5/1000 SF	= 113.00
General Offices - 3000 SF @ 12.3/1000 SF	= 36.90
Total ADT	= 149.90

PLAT TO ACCOMPANY PETITION FOR VARIANCES

SCHUSTER CONCRETE  
3717 CRONDALL LANE  
OWINGS MILLS, MARYLAND 21117

ELECTION DISTRICT NO. 4  
BALTIMORE COUNTY, MARYLAND

REVISIONS:

SCALE: 1" = 50'
DATE: 9/2/89
JOB NO.: 0006/08
DESIGNED: PM
DRAWN: PM
CHECKED: TH
DRAWING NUMBER:

HOFF & ANTONUCCI, INC.

land development consultants and landscape architects

p.o. box 27402  
TOWSON, MD 21285-7402  
301-668-6318

CRG-1

SHEET 1 OF 2



legislatively pre-determined. Appellee's combination, via a manufacturing operation, of sand, water, aggregate and cement to form the product of concrete is a permitted use.

#### DESIGN AND CONSTRUCTION OF THE PROPOSED FACILITY

Appellants, through Mr. FitzSimons, and their Exhibits 5, 6 and 7 have shown this Board what a ten-year old batch plant may look like and how it may operate. Mr. FitzSimons' testimony about the extensive outside storage of aggregate, exterior conveyors and grinding of aggregate by vehicles on-site is irrelevant to this proposed facility. The uncontradicted testimony of Mr. Schuster is that there would be an aggregate storage area outside for emergency use when the delivery of aggregate or sand is interrupted. This storage area will be enclosed on three sides by a concrete wall. The normal tailored and sensitive design and operation of this enclosed batch plant is that the raw materials of sand and aggregate will be delivered directly into underground hoppers and the material then lifted, completely indoors, to the top of the enclosed structure by conveyor.

The design aspects of the batching plant and the environmental enhancements to which the Appellee is committed are state of the art. All of Mr. FitzSimons' comparisons were of no relevance or consequence because they were incomparable to the type of facility being proposed which he acknowledged was in sharp contrast to the concrete batch plant which he displayed in the course of his testimony.

The design and operation of the proposed facility bears no resemblance whatsoever to that of a "bituminous concrete mixing plant" i.e., asphalt, as permitted pursuant to BCZR Section 256.2, in the MH zone. It is evident that, considering the magnitude of intensity of a bituminous concrete mixing plant, (i.e., the required heating of the product to over 300 degrees, the vast number of types of aggregate needed and the associated noise of driers and indisputable odor), the County Council desired to ensure that such a use not be developed in a ML zone and thus, limited this use to the MH zone only. The County Council, recognizing that concrete was a product and that concrete batching plants were permitted under BCZR Section 253.1.A.9, took the precautionary step to clarify that the more intensive use of bituminous concrete manufacture would be restricted to MH zones. The Baltimore County Zoning Office recognizes this legislative intent by recognizing and permitting concrete batch plants in ML zones as evidenced by the CRG comments and the approved CRG Plan, as well as by a definitive determination by James Dyer, included as Appellee's Exhibit No. 3.

#### BALTIMORE COUNTY ZONING REGULATIONS

Appellants, through their protracted appeals of Appellee's approvals, are attempting to deny the use of the subject property because, in their self-serving, subjective opinion, the proposed facility is not in keeping with their alleged "campus-like" use in the ML zone. The thrust of their argument is that since

"concrete batch plant" is not defined or expressed in the ML zoning regulations of the BCZR, such use is prohibited. The BCZR do not contain, in any section for any zone, the express use of "concrete batch plant." The County Council anticipated potential differences of interpretation for non-expressly defined terms and enacted BCZR Section 101 to address any such differences of opinion.

Pursuant to BCZR Section 101, any terms not expressly defined in the regulations are to be interpreted according to the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary ("Webster's.")

The term "product" is defined by Webster's as "something produced by physical labor or intellectual effort," or a "substance produced from one or more other substances as a result of a chemical change." (Attached hereto) Appellants suggest to this Board that the chemical change of the bonding together of aggregate and sand by the chemical combination of cement and water is not a product. Yet, Appellants suggest that once the water evaporates from concrete, a product is formed. The binding principles of statutory construction, together with the clear and unambiguous provisions of the BCZR will not tolerate such a tortured interpretation as posed by Appellants.

Moreover, the product of concrete is manufactured in a batch plant operation as is being proposed on the subject property. Webster's defines the term "manufacture" as something made from

raw materials by hand or by machinery. The process of machine mixing of the raw materials necessary to create concrete is clearly the manufacture of a concrete product.

Appellants, through an unknown interpretive technique not recognized by the BCZR, suggest that Redi-Mixed concrete is not a concrete product because it is not in a hardened form. Therefore, if one were to accept this rationale, a concrete block would not be classified as a product until it formed a wall, foundation or similar structure. Likewise, gasoline in its final state before sale to customers has no form; can it be denied that gasoline is a product?

Appellants, through their use of Deputy Zoning Commissioner Jung's Order and through direct testimony from Mr. FitzSimons, assert that a concrete batch plant is permitted in a ML-IM zone so long as it remains accessory to another use which is expressly defined by the BCZR. Mr. FitzSimons acknowledged that a concrete block manufacturing operation would include a concrete batch plant as the process necessary to produce the concrete. The proposed facility is permitted as of right pursuant to BCZR Section 253.1.A.9, as discussed previously. Additionally, using the approach of Appellants, the proposed facility is permitted as of right by BCZR Section 253.1.A.54. Since Appellants have shown that a concrete batch plant is a necessary process as part of concrete block manufacture, Section 253.1.A.54 permits the "manufacture of articles of merchandise made from materials permitted to be used and made by processes permitted to be

employed in the production activities more specifically listed above." Thus, at a minimum, the proposed facility is permitted by this latter section of the BCZR.

#### THE PROPOSED FACILITY

Appellee proposes to construct a state-of-the-art concrete batch plant with office and warehouse space on the subject property. Proposed are environmental safeguards including truck washing facilities, interior storage of the majority of the materials used in the production process, a 16-foot high barrier wall on the east boundary, a reclaimer for unused concrete returned to the plant and high-volume air handlers on the bay houses. All primary aspects of the production process are to be enclosed within a building inclusive of the storage, mixing and conveyance systems, unlike the open and exposed "batch plants" described and photographed by Appellants.

Assertions of nuisance dust are rendered moot by the testimony of Mr. David Capen, an air quality specialist, with regard to Appellee's existing concrete batch plant at New Plant Court. The air quality measurements, both on and off-site, contained in Appellee's Exhibit No. 11 are proof-positive of the quality of the existing operation of Appellee and directly indicative of the proposed facility and renders Mr. FitzSimons' testimony as to conditions at other facilities without merit or weight.

Daniel Schuster took every step that a prudent business person should take before selecting this manufacturing site. The

testimony of Ms. Brenda Crabbs, the former Owings Mills Coordinator for Baltimore County, regarding her contacts with Mr. Schuster remains uncontradicted. Ms. Crabbs advised Mr. Schuster much the same as she advised many of the Appellants herein, including MIE Development, Riparius, etc. Ms. Crabbs directed Daniel Schuster to the subject location based on the existing ML zoning, the excellent transportation network and the ML zoning of adjoining and nearby properties. Ms. Crabbs also testified that the ML zoned land in Baltimore County for uses as proposed by Appellee is in short supply. The shortage, according to Ms. Crabbs, who is intimately aware of conditions in Owings Mills, is due in substantial part to major developers acquiring and controlling large amounts of ML zone leaving a minimum number of sites available for small business people like Schuster. Ms. Crabbs also testified that developers inclusive of the Appellants, erect offices in manufacturing zones and then object to manufacturing uses coming to their "campus-like business parks." Ms. Crabbs testified that she was assured by all affected County agencies that the concrete batch plant use proposed by Schuster was permitted as of right in the ML zone.

It is instructive, and perhaps determinative, to note that the CRG comments and particularly the zoning comment pertaining to Schuster's New Plant Court location and the CRG minutes and comments which are part of the record in this case recognize the proposed use as a permitted use. The only suggestion that the proposed use was not permitted in a ML zone was raised by

Appellants. The CRG gave final approval to the proposed development plan showing the proposed use and such approval is legislatively deemed to be presumptively correct.

What cannot be overlooked by this Board is the written and verbal testimony from neighbors of Mr. Schuster's existing and proposed locations. This Board heard the testimony of Mr. Dana Fiege, President of Treo Metal Products, who owns one of the lots in the immediate vicinity of the subject site and adjoining the property of the Appellants testified that the proposed use "will have no adverse effect" on his manufacturing operation. Similarly, Mr. Ronald Hux, President of Duron, Inc., a high quality office furniture operation, told this Board of his initial concerns about the Schuster Concrete batch plant on New Plant Court. As an immediate and adjoining neighbor, he was worried about possible negative impressions that his customers might develop. Mr. Hux went on to say that his fears were misplaced and that there was no problem with dust as Mr. Schuster keeps "New Plant Court cleaner than Dolfield Road."

#### SUMMARY

Appellee, Daniel G. Schuster, Inc., proposes a modest and state-of-the-art concrete batch plant on a parcel of land zoned ML-IM. All County review agencies and the Deputy Zoning Commissioner over the protest of the large developer Appellants agree that the proposed use is permitted as of right in the ML-IM zone. Appellants suggest that because the concrete produced will not be allowed to dry into a solid object on the subject site,

that the use is prohibited in a ML zone. The clear interpretation according to canons of statutory construction and as required by the BCZR and policies is that the proposed use is permitted as of right. The fact that Appellants have elected to construct uses which, in their opinion, are not compatible with manufacturing uses intended and directed to be located in the ML zone by the County Council is immaterial. In the final analysis, the Appellants ought most likely be determined to be a "nuisance" to intended manufacturing operations. All environmental studies, both County and private, have directed sanctioned and approved the proposed use. The traffic associated with the proposed use is not dissimilar to that associated with a concrete block plant operation, i.e., raw material trucks will deliver the sand, gravel and cement to the batching facility. The concrete produced at a block plant is then allowed to harden into blocks and must be transported by trucks to construction sites.

The subject site was recommended by the County for the proposed use. The Board's file contains letters and copies of letters from fellow-business people in support of the proposed facility. The only detractors of this facility are Appellee's larger, and perhaps more heavily financed competitors, who are also some of Mr. Schuster's developer customers.

This Board should be guided by the principles of law for statutory construction and the requirements of the BCZR for interpreting non-expressly defined terms. If such a course is followed, affirmance of all of Appellee's past approvals and



typical concrete block plant are largely performed indoors, whereas many of those involved in a concrete batching plant (a.g., the delivery of wet concrete or concrete ingredients into mixing trucks) must necessarily be performed outdoors. In nearly every respect, the concrete batching plant was shown to be more intrusive and likely to create more negative impacts on surrounding businesses and residences.

In light of this evidence, there is no basis in the record below for concluding that a concrete batching plant uses "processes permitted to be employed" in the production of concrete products, within the meaning of §253.1.A.54.<sup>10</sup> What is more, as the Appellant maintained below, a batch of unhardened concrete cannot be regarded as an "article of merchandise" within the meaning of that subparagraph. As to §253.1.E of the BCZR, if, as the Appellants contend, a concrete batching plant is not permitted as a single use, it

<sup>10</sup> Surely, §253.1.A.54 requires that the processes employed in activities sought to be established under that subparagraph, when considered as a whole, be no more objectionable to neighboring uses than the processes employed in specifically listed activities. The fact that some processes employed in a particular proposed activity are the same as processes employed in a listed activity is not sufficient if the totality of the circumstances concerning the proposed activity make it a much more intensive or objectionable use. Otherwise, §253.1.A.54 would be a vehicle for bringing heavy industrial uses into districts where they are wholly incompatible with surrounding uses. In this case, Appellee Schuster argues that some of the concrete mixing processes involved in a batching plant are also involved in a concrete products plant. While this may be true, the totality of the operations making up a batching plant render it a much heavier and more objectionable use than a concrete products plant.

is certainly not permitted in combination with another use by virtue of that section.

Because a concrete batching plant is not included among the uses listed as permitted as a matter of right or by special exception in the ML zone, it is prohibited by the rule set forth in *Kowalski v. Lamar*, 25 Md. App. 493, 498, 334 A.2d 536 (1975) ("the only uses permitted ... are those designated as uses permitted as of right and uses permitted by special exception. Any use other than those permitted and being carried on as of right or by special exception is prohibited"). This rule was invoked below by both parties and the Board.

Apparently conceding that the "ordinary" concrete batching plant has characteristics that would render it objectionable to nearby residents and businesses, Appellee Schuster presented extensive testimony and argument below to the effect that its proposed concrete batching plant would be uniquely designed and carefully operated to control noisome off-site impacts. As commendable as the Appellee's efforts to control objectionable dust, noise, and other factors may be, they do not and cannot transform the Appellee's concrete batching plant into some different use that is permitted under the current zoning of the Subject Property. Both traditional and state-of-the-art concrete batching plants are prohibited in the ML zone under the BCZR.

#### IV. Even if a Concrete Batching Plant Were Permitted in the ML Zone, the Board Erred in Granting the Variances Requested by Appellee Schuster; There Was Insufficient Evidence of Non-Self-Inflicted Difficulty or Hardship to Permit a Reasoning Mind to Conclude that Any Variances Should Be Granted.

Although Appellants rely here primarily on their interpretation of §253.1.A, they also want to emphasize that the evidence produced at the Board's October 19, 1989, hearing would not in any event support the Board's granting of variances for the proposed use of the Subject Property.<sup>11</sup>

Under §307.1 of the BCZR, the Zoning Commissioner, and the Board on appeal, are authorized to grant variances from height, area, parking, and sign regulations "in cases where strict compliance with the [BCZR] would result in practical difficulty or unreasonable hardship." The evidence produced before the Board in these cases eliminated any doubt as to the fact that whatever "practical difficulty or unreasonable hardship" Appellee Schuster might experience because of having to comply strictly with area requirements as to setbacks and building separation would be largely the result of its own choices and actions. Not only did Schuster acquire an option on a site that is too small, too narrow, subject to too many

<sup>11</sup> In its Post-Hearing Memorandum for the Board, Appellee Schuster stated that the Appellants had agreed on the record to limit their appeal of the variances granted by the Deputy Zoning Commissioner to the principal issue of the status of the proposed concrete batching plant as a permitted use. Memorandum, p. 5. This statement was incorrect, and the Appellants argued below, as they do here, that even if a concrete batching plant were permitted as a principal use in the ML zone, the granting of variances would be improper here, because any difficulty or hardship was self-inflicted. See T.6.

development constraints, and otherwise unsuitable for the development it wishes to undertake (Schuster acquired an option on a 7.23-acre site, a large part of which is in a floodplain, leaving only 3.19 developable acres<sup>12</sup>), but it subsequently proceeded to construct a reclamation facility and an aggregate storage area before obtaining, or even applying for, required permits. T.24, 29, 42-43, 49-50, 96-97.

The law in Maryland is quite clear that variances are not properly granted in cases of self-inflicted hardship. Indeed, in several cases, the Maryland Court of Appeals has scoffed at attempts, similar to the one involved here, to use prior unlawful acts as the basis for an argument of hardship.

In *Salisbury Board of Zoning Appeals v. Bonds*, 240 Md. 547, 214 A.2d 810 (1965), an applicant who had proceeded with construction work before obtaining a building permit or applying for a variance tried to rely on the fact that the work had been substantially completed and could not be undone without financial hardship as the basis for a zoning variance. The Court of Appeals easily rejected this argument, quoting Rathkopf's discussion of self-inflicted hardship (2 Rathkopf, *The Law of Zoning and Planning*, §48-1). 240 Md. at 554-55.

<sup>12</sup> The Board's Opinion erroneously recites that "[t]he subject site consists of 10.37 acres and is zoned M.L.-I.M. The property is served by a 700-foot panhandle drive situated on its western boundary...." Opinion, p.2. In fact, the net acreage of the property involved in these cases is 7.23 acres, and the panhandle along the western boundary of the property is 574 feet long. Appellee's Exhibits 1 and 9; T.82-83.

Again, in *Wilson v. Mayor of Elkton*, 35 Md. App. 417, 371 A.2d 443 (1977), where an applicant argued that he needed a variance for an exterior stairway so that he would not be unfairly deprived of the right to continue using a third dwelling unit that had been unlawfully established in a residential building, the court had little difficulty in turning aside the argument. The court stated:

It approaches the ridiculous to say that the unlawful extension of the non-conforming use from two units to three units entitles the owner to the blessing of legitimacy for the violation of yet another law.

35 Md. App. at 427.

More recently, in *Ad + Soil, Inc. v. County Commissioners*, 307 Md. 307, 513 A.2d 893 (1986), the Court of Appeals sustained the denial of a variance, where the property in question was large enough that the applicant could have complied with all setback requirements, but proceeded to establish a sewage sludge storage and distribution facility after obtaining a State permit and before learning of local zoning requirements. The court agreed with the county board of appeals that any hardship faced by the applicant was self-inflicted. 307 Md. at 340.

Just as in the cited cases, Appellee Schuster cannot successfully obtain variances on grounds that the strict application of local setback requirements would result in practical difficulty or unreasonable hardship, where the reason for any such difficulty or hardship is its own unwise choice of a site or its unlawful action in erecting structures

before obtaining building permits or fully investigating zoning requirements.

Additionally, §307 of the BCZR permits the granting of a variance only if it can be granted "without substantial injury to the public health, safety, and general welfare". In these cases, there was ample evidence before the Board that the granting of variances to accommodate the establishment of Appellee Schuster's concrete batching plant on the Subject Property would result in substantial injury -- in the form of noise, dust, heavy truck traffic, and aesthetic incompatibility -- to existing nearby business and residential properties.

Both Mr. FitzSimons and Mr. Daniel G. Schuster himself testified about the characteristics of a concrete batching plant (although they disagreed on whether these characteristics were more noxious than those associated with a concrete products manufacturing operation). T.31-36, 149-57. Both indicated that there would be large numbers of heavy trucks, carrying supplies into the batching plant and carrying concrete or concrete components from the plant, during a typical working day. Mr. Schuster estimated that every day there would be 30 concrete mixers in and out of the proposed Schuster batching plant about three times each (for a total of 90 trips), and that for each concrete truck departure there would be a supplier truck delivery. T.198-99. Mr. FitzSimons pointed out that these trucks would have to ascend a

"relatively steep" rising grade on their way out of the site, and that they would have to make left hand turns across traffic on Crondall Lane, including any commuter traffic bound for The Business Center at Owings Mills. T.158-59. There would also be heavy equipment working on the site to maintain and manipulate "emergency" stockpiles of concrete components. See T.35, 44. In addition, the dumping of leftover concrete would be at an outdoor reclamation area. T.30-33. These operations would be bound to generate a high level of noise.

Mr. FitzSimons noted that the constant truck traffic grinding any concrete components present on the site of a batching plant would generate a large amount of dust. T.155, and although Mr. Schuster emphasized measures he intended to institute to minimize dust pollution, T.39-42, this testimony only served to underline the severity of potential dust problems.<sup>13</sup> Mr. Schuster also acknowledged that the open aggregate stockpiles on the subject property would reach as high as 12 feet within 6 foot walls on three sides. T.29, 44-45.

Several witnesses appeared at the hearing before the Board to protest Appellee Schuster's establishment of a concrete batching plant on the Subject Property. Two of these were unrelated to the Appellants or to The Business Center at

<sup>13</sup> The fact that Appellee Schuster's existing, much smaller operation on New Plant Court may not be in violation of State air pollution regulations or occupational safety and health standards cannot assure that there will be no dust problems at a larger facility on the Subject Property.

Owings Mills. Ms. Kathleen Pontone, representing The Valleys Planning Council, testified in opposition, objecting primarily to the traffic and aesthetic impacts of the proposed batching plant. Ms. Pontone noted that plans called for a tall (60-to-80-foot) tower or silo that could be seen from nearby historic districts. T.47-48, 140-41. She explained that, despite Appellee Schuster's assurances, T.91, The Valleys Planning Council was disturbed by the prospect of heavy truck traffic traveling in an easterly direction from the Subject Property. T.134-35. Indeed, Ms. Pontone and her husband had observed numerous Schuster trucks along Caves Road. Appellants' Exhibits 3A and 3B.

Dr. Alan Schneider, general manager of Catalyst Research, which is located directly across Crondall Lane from the Subject Property, testified as to the nature of Catalyst Research's business and its objections to the location of a concrete batching plant on the Subject Property. T.126. Catalyst Research makes batteries for cardiac pacemakers, as well as surgical instruments and instruments designed to measure the presence of various gases in the workplace. T.127. Dr. Schneider explained that standard filtration equipment now maintained a satisfactory interior environment for these high-technology manufacturing operations, but that he was very concerned that caustic concrete dust could be detrimental to them. T.130-31. He also emphasized the importance to Catalyst Research of the campus-like environment



currently existing along Crondall Lane; the company had moved a major portion of its operations to Crondall Lane to escape heavy truck traffic at a former location and because of the physical surroundings at the new location, which it felt contributed to a favorable image for a medical equipment company. T.128-29.

Similarly, Mr. James Flannery, president of Riparius Development Corporation, a general partner in three of the Appellant partnerships, testified that the proposed concrete batching plant would be incompatible with properties in The Business Center at Owings Mills. T.119. Mr. Flannery indicated that a major tenant of that portion of The Business Center in which his company has an interest is SmithKline Bio-Science Lab, Inc., and he also testified that The Center includes several pharmaceutical manufacturers. T.112-13. He, too, noted the importance of a high-quality physical environment and pointed out that there are protective covenants in The Business Center to safeguard this environment. T.114. He indicated that plans call for about 1,300,000 square feet to be developed in The Business Center and confirmed that the total public and private investment in The Center is projected to be from 80 to 100 million dollars. T.113. The prospective adverse impacts of Schuster's proposed batching plant on the "aesthetic ambience" so valued by Dr. Schneider, Mr. Flannery, and their companies are detrimental effects that can furnish the basis for denial of a variance.

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See Dahl v. County Board of Appeals of Baltimore County, 258 Md. 157, 167, 265 A.2d 227 (1970).

Finally, this Court should not lose sight of the extremely significant fact, clearly established by the Appellee's own testimony, that Appellee Schuster has not yet taken title to the Subject Property. T.22-23. The company is thus not "locked in" to this location. Why, under these circumstances, should the Zoning Regulations of Baltimore County be strained to accommodate a use that does not fit the site and is totally incompatible with the neighborhood?

#### CONCLUSION

The Appellants have had to wait throughout the lengthy proceedings below for the statutory construction question on which these cases depend to reach a proper forum. They are confident that this Court will agree that a concrete batching plant is not permitted as a principal use in the ML zone. For that and the other reasons stated above, Appellants urge this Court to reverse the February 5, 1990, Order of the Board and to grant the Appellants' Motion for Special Hearing in Case No. 89-506-SPH, deny the Petition for Variances in Case No. 89-464-A, and invalidate the CRG's approval of Appellee Schuster's development plan, the subject of Case No. CBA-89-124.

Respectfully submitted,

*Joseph C. Wich, Jr.*  
Joseph C. Wich, Jr.

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Robert A. Hoffman

*Judith A. Arnold*  
Judith A. Arnold

Venable, Baetjer and Howard  
210 Allegheny Avenue  
P. O. Box 5517  
Towson, Maryland 21204  
(301) 823-4111

Attorneys for Appellants,  
Cronridge Investors, et al.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of April, 1990, a copy of the foregoing Appellants' Rule B 12 Memorandum was served on the Administrative Secretary, County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204, and copies were hand-delivered to Julius W. Lichter, Esquire and Howard L. Alderman, Jr., Esquire, Levin & Gann, P.A., 113 Chesapeake Building, 305 W. Chesapeake Avenue, Towson, Maryland 21204.

*Judith A. Arnold*  
Judith A. Arnold

MEMO0144.JAA

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EXHIBIT A

a. Plans or sketches of all elevations of each building exterior, indicating building materials; (Bill No. 56, 1961.)

c. A general explanation of the proposed plan of use and operation, including, but not limited to such factors as: expected maximum number of employees and times of operation; timing and routing of movements of raw materials to the site and of finished products therefrom; expected levels of potential emanations, including but not limited to noise, dust, odors, vibration, glare and heat. (Bill No. 56, 1961.)

M.L. Zone--Manufacturing, Light (B.C.Z.R., 1955.)

Section 253--USE REGULATIONS (B.C.Z.R., 1955; Bills No. 85, 1957; No. 100, 1970.)

253.23--Uses Permitted as of Right. The uses listed in this subsection, only, shall be permitted as of right in the ML zone, subject to any conditions hereinafter prescribed. (B.C.Z.R., 1955, Section 253, Bills No. 85, 1957, Section 253; No. 100, 1970.)

a. The following industrial uses:

1. Airplane assembly
2. Automobile assembly
3. Boat yards (including marinas or marine railways)
4. Bottling establishments, soft-drink
5. Candy manufacture, packaging, or treatment
6. Carpet or rug cleaning
7. Cellophane-products manufacture or processing--restricted production (See Subsection 253.3.)
8. Cleaning or dyeing
9. Concrete-products manufacture, including manufacture of concrete blocks or cinder blocks
10. Cork-products manufacture or processing--restricted production (See Subsection 253.3.)
11. Cosmetics manufacture, compounding, packaging, or treatment
12. Drug manufacture, compounding, packaging, or treatment
13. Electrical-appliance assembly
14. Enameling, japanning, or lacquering
15. Excavations, controlled, except those involving the use of explosives
16. Fiber-products manufacture or processing, including the manufacture or processing of articles made of

2-65

APPROVED JUL 0 1 1989

IN THE MATTER OF SCHUSTER CONCRETE/ JOSEPH L. CARDINALE, ET AL/CRONRIDGE INVESTORS, INC., ET AL RE PROPERTY LOCATED ON THE SOUTH SIDE OF CRONDALL LANE, 468' EAST OF THE CENTERLINE OF OWINGS MILLS BLVD. (3717 CRONDALL LANE) 4TH ELECTION DISTRICT 3RD CONGRESSIONAL DISTRICT

RE: CRG DECISION AND PETITIONS FOR VARIANCE AND SPECIAL HEARING DANIEL G. SCHUSTER, INC., ET AL/ PLAINTIFFS, CASE NOS. CBA-89-124, 89-464-A & 89-506-SPH

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE COUNTY REVIEW GROUP, THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Lawrence E. Schmidt, and John G. Disney, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the office of the CRG group, the Zoning Commissioner and the Board of Appeals of Baltimore County:

ENTRIES FROM DOCKET OF COUNTY REVIEW GROUP, ZONING COMMISSIONER AND BOARD OF APPEALS OF BALTIMORE COUNTY

No. CBA-89-124 - Schuster Concrete

April 6, 1989 CRG Meeting wherein the Plan was approved.

May 4 Notice of Appeal received from Robert A. Hoffman, Esq. on behalf of Appellants/Protestants.

FOLLOW ENTRIES UNDER CASE NOS. 89-464-A & 89-506-SPH beginning with October 19, 1989 Board Hearing.

Case Nos. 89-464-A & 89-506-SPH Joseph L. Cardinale, et al/Cronridge Investors, Inc., et al, respectively

March 22, 1989 Petition of Joseph L. Cardinale, et al for zoning variances-setbacks

May 1 Zoning Plans Advisory Committee Comments re: Cardinale, et al.

May 4 Petition for Special Hearing of Cronridge Investors, Inc., et al, for a concrete plant in ML zone as to an allowable use.

May 24 Certificates of Posting of Property (both).

May 25 Certificates of Publication in newspaper (both).

May 31 Zoning Plans Advisory Committee Comments re: Cronridge Investors, Inc., et al.

Case Nos. CBA-89-124, 89-464-A & 89-506-SPH Schuster Concrete/Joseph Cardinale, et al/Cronridge Investors, Inc., et al

June 13, 1989 Hearing held on Petitions by Deputy Zoning Commissioner.

July 21 Order of the D.Z.C. GRANTING Petition for Variances with restrictions and further stating that a concrete batching plant be approved as a principal use in an ML zone thereby DENYING Petition for Special Hearing.

August 2 Order for Appeal received from Robert A. Hoffman, Esquire, et al, on behalf of Protestants.

October 19 Hearing before the Board of Appeals.

November 15 Appellee's Post-Hearing Memorandum filed by Levin & Gann, P.A.

November 15 Memorandum of Cronridge Investors, Inc., et al filed by Robert A. Hoffman, Esquire, et al.

February 5, 1990 Opinion and Order of the Board DENYING Special Hearing Petition, GRANTING Petition for Variances with restrictions and AFFIRMING the CRG.

February 23 Order for Appeal filed in the Circuit Court for Baltimore County by Venable, Baetjer & Howard on behalf of Protestants.

February 28 Certificate of Notice sent to interested parties.

March 5 Petition to accompany appeal filed in the Circuit Court for Baltimore County by Venable, Baetjer & Howard.

March 23 Transcript of testimony filed.

Appellee/Developer's Exh. No. 1 - CRG development plan.

" " " " 2 - CRG minutes 4/6/89, 2/17/89, 2/3/89 & Z.A.C.

" " " " 3 - letter to Zoning 1/17/85 & reply from Dyer.

" " " " 4 - Jean Jung's (D.Z.C.) Order 6/12/87

" " " " 5 - Same as #1

" " " " 6 - Photos A-of site from school B-of site

" " " " 7 - descr. plat showing proposed improvements.

" " " " 8 - Hoff Landscape plan.

" " " " 9 - Plat, colored in -same exhibit more detail.

" " " " 10 - Opinion of D.Z.C. on this case

" Appellee/Developer Exhibits continued-next page 7/21/89.

Appellants Exh. No. 1 -A-F Photos of site, Knott Bldg., Lot 9, Bldg. "B", Catalyst Bldg.

" " " " 2 -opposition of Valley Planning Council

" " " " 3 -A & B -Affidavits of Mitchell Kolkin and Kathleen Pontone.

" " " " 4 -Fitzsimmons C.V.

Case Nos. CBA-89-124, 89-464-A & 89-506-SPH Schuster Concrete/Joseph Cardinale, et al/Cronridge Investors, Inc., et al

Appellants Exhibit No. 5 - Photo

" " " " 6 - Photo of batch plant.

" " " " 7 - Photo of batch plant.

(Continued Appellee/Developer's Exh. No. 11 - Penneman & Broome, Inc.

from page 2) " " " " 12 - Tests & properties of concrete & concrete making.

" " " " 13 - V Cart operation Zoning process

" " " " 14 - A & B Photos one concrete block site.

" " " " 15 - Photo concrete block site in Texas Maryland.

" " " " 16 - Photo Schuster's plant.

March 23, 1990 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Respectfully submitted,

*Linda Lee M. Kuszmaul*  
Linda Lee M. Kuszmaul, Legal Secretary  
County Board of Appeals of Baltimore County

cc: Joseph C. Wich, Jr., Esquire  
Robert A. Hoffman, Esquire  
Judith A. Arnold, Esquire  
Cronridge Investors, Inc., et al  
Julius W. Lichter, Esquire  
Howard L. Alderman, Jr., Esquire  
Daniel G. Schuster

IN THE MATTER OF DANIEL G. SCHUSTER, INC./JOSEPH L. CARDINALE and CRONRIDGE INVESTORS, et al, PROPERTY LOCATED ON SOUTH SIDE OF CRONDALL LANE, 468' EAST OF C/L OF OWINGS MILLS BOULEVARD (3717 CRONDALL LANE)

County Board of Appeals of Baltimore County, Case Nos. CBA-89-124, 89-464-A, and 89-506-SPH

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE COUNTY

\* Case No. 90 CG 741  
\* 77/341

#### ANSWER TO PETITION OF APPEAL

Daniel G. Schuster, Inc. ("Schuster"), by its undersigned counsel, answer the Petition of Appeal filed by Appellants in the above-captioned case as follows:

1. Admits only that the Baltimore County Board of Appeals ("Board") denied Appellants' Petition for Special Hearing in Case No. 89-506-SPH.
2. Admits only that the Board granted Schuster's Petition for Zoning Variances in Case No. 89-464-A and incorporated portions of the decision of the Deputy Zoning Commissioner which also granted the requested relief.
3. Admits.
4. Denies the allegations of paragraph A. of Appellants' Petition.
5. Denies the allegations of paragraph B. of Appellants' Petition.



DEFENSE

6. The order of the Board denying Appellants' Petition for Special Hearing and granting Schuster's Petition for Zoning Variance was proper and in accordance with all applicable law and regulations.

7. The order of the Board affirming the CRG approval of Schuster's development plan was in accordance with Baltimore County Code Section 22-61 (c), and was therefore proper.

Respectfully submitted,

Julius W. Lichter

Howard L. Alderman, Jr.

Levin & Gann, P.A.  
305 W. Chesapeake Ave. #113  
Towson, Maryland 21204  
(301) 321-0600

Attorneys for Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day of MARCH, 1990, a copy of the foregoing Answer to Petition of Appeal was delivered to the Baltimore County Board of Appeals, Room 315, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204; and that a copy thereof was mailed to Joseph C. Wich, Jr., Esquire,

Robert A. Hoffman, Esquire, and to Judith A. Arnold, Esquire, all of Venable, Baetjer and Howard, 210 Allegheny Avenue, P. O. Box 5517, Towson, Maryland 21204.

Howard L. Alderman, Jr.

IN THE MATTER OF DANIEL G. SCHUSTER, INC./JOSEPH L. CARDINALE and CRONRIDGE INVESTORS, et al., PROPERTY LOCATED ON SOUTH SIDE OF CRONDALL LANE, 468' EAST OF C/L OF OWINGS MILLS BOULEVARD (3717 CRONDALL LANE) \* IN THE CIRCUIT COURT FOR BALTIMORE COUNTY \* Case No. 90 CG 741 77/341

PETITION OF APPEAL

Appellants, Cronridge Investors, Owings Mills III General Partnership, Crondall Lane Limited Partnership, Owings Mills Commerce Centre Limited Partnership, Seven Crondall Associates Limited Partnership, Eight Crondall Associates Limited Partnership, and Nine Crondall Associates Limited Partnership, having filed their Order for Appeal herein on February 23, 1990, hereby submit their Petition of Appeal, as required by Maryland Rule B2e.

Action Appealed From

Appellants seek the Court's review of the action of the County Board of Appeals of Baltimore County (the "Board") reflected in the Board's February 5, 1990, Opinion and Order in this matter, a copy of which is attached hereto as Exhibit A. The Board took action in three cases consolidated before it, as follows:

1. The Board denied Appellants' Petition for Special Hearing (Case No. 89-506-SPH), in which Appellants maintained that a concrete batching plant, such as the one proposed to be

established by Daniel G. Schuster, Inc. ("Schuster") on the property at issue here, is not, under the Baltimore County Zoning Regulations ("BCZR"), a use permitted, either as a matter of right or by special exception, and is therefore prohibited, in the County's ML (Manufacturing, Light) zone.

2. The Board granted Schuster's Petition for Variances (Case No. 89-464-A) from the setbacks required by Sections 244.1, 238.1, and 238.4 of the BCZR, notwithstanding Appellants' objections to those variances. In doing so, the Board imposed a number of conditions that had previously been imposed by the Deputy Zoning Commissioner.

3. The Board affirmed the April 5, 1989, action of the County Review Group ("CRG") in approving Schuster's development plan for a concrete batching plant on the subject property (Case No. CBA-89-124).

Error Committed by the Board

The Board's action was not in accordance with law and should be reversed by this Court on the following grounds:

A. The Board committed a fundamental error of law when it construed Section 253.1.A.9 of the BCZR to permit the establishment of a concrete batching plant in an ML zone. Because Section 253.1.A.9 does not permit a concrete batching plant in such a zone, the Board should have granted the Appellants' Petition for Special Hearing and reversed the CRG's approval of Schuster's illegal development plan.

B. Even assuming arguendo that a concrete batching plant were permitted in an ML zone, the Board should have denied Schuster's Petition for Variances, because the evidence before the Board left no room for debate; that evidence showed that the practical difficulties relied on by Schuster were self-inflicted and that the requested variances could not be granted without substantially injuring nearby property owners, including Appellants, in the lawful use of their own properties.

Relief Sought

For the reasons stated above, and for other reasons that may be stated hereafter in these proceedings, Appellants pray that the Court reverse the action reflected in the Board's February 5, 1990, Opinion and Order and declare that a concrete batching plant, such as the plant proposed by Schuster, is not, under the BCZR, a use permitted on the subject, ML-zoned property. In the alternative, Appellants pray that the Court reverse the Board's action in granting variances from the setback requirements of the BCZR.

Respectfully submitted,

Joseph C. Wich, Jr.  
Robert A. Hoffman

Judith A. Arnold  
Judith A. Arnold

Venable, Baetjer and Howard  
210 Allegheny Avenue  
P. O. Box 5517  
Towson, Maryland 21204  
(301) 823-4111

Attorneys for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 1990, a copy of the foregoing Petition of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204, and a copy was mailed to Julius W. Lichter, Esquire, Levin & Gann, Inc., 113 Chesapeake Building, 305 W. Chesapeake Avenue, Towson, Maryland 21204.

Judith A. Arnold  
Judith A. Arnold

PET10135.JAA

EXHIBIT A

IN THE MATTER OF SCHUSTER CONCRETE /JOSEPH L. CARDINALE, ET AL /CRONRIDGE INVESTORS, INC., ET AL RE PROPERTY LOCATED ON THE SOUTH SIDE OF CRONDALL LANE, 468' EAST OF THE CENTERLINE OF OWINGS MILLS BLVD. : BALTIMORE COUNTY 4th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT RE: CRG DECISION AND PETITIONS FOR VARIANCE AND SPECIAL HEARING : CASE NO. CBA-89-124 AND CASE NO. 89-464-A and NO. 89-506-SPH

OPINION

The legal morass known as "In Re Schuster Concrete" comes to the Board as a consolidation of three matters considered below. Specifically, the Board has before it an appeal from the decision of the County Review Group (hereinafter CRG) dated April 6, 1989 wherein the plan was approved; an appeal from the decision of the Deputy Zoning Commissioner dated July 21, 1989 which granted certain variances; and an appeal from the decision of the Deputy Zoning Commissioner of same date which denied a Petition for Special Hearing. As indicated above, the Board consolidated these cases for the purpose of hearing and deliberation in that all of the issues presented arise from the prospective development of that property known as 3717 Crondall Lane.

The Appellee herein, Schuster Concrete, proposes to construct a concrete batching plant at the above-referenced site. In order to commence construction of same in accordance with its plans, the Appellee requires CRG approval as well as certain variances. In opposition to the project, a number of neighboring protestants petitioned the Zoning Commissioner for a special hearing, maintaining that the use proposed was not permissible under the Baltimore County Zoning Regulations (hereinafter B.C.Z.R.). These protestants, the Appellants herein, have appealed the approvals granted as well as the denial of their Petition for Special Hearing.

IN THE MATTER OF SCHUSTER CONCRETE/ JOSEPH L. CARDINALE, ET AL/CRONRIDGE INVESTORS, INC., ET AL RE PROPERTY LOCATED ON THE SOUTH SIDE OF CRONDALL LANE, 468' EAST OF THE CENTERLINE OF OWINGS MILLS BLVD. (3717 CRONDALL LANE) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT RE: CRG DECISION AND PETITIONS FOR VARIANCE AND SPECIAL HEARING DANIEL G. SCHUSTER, INC., ET AL/ PLAINTIFFS CASE NOS. CBA-89-124, 89-464-A and 89-506-SPH \* IN THE CIRCUIT COURT FOR BALTIMORE COUNTY \* CO Doc. No. 77 \* Folio No. 341 \* File No. 90-Cg-741

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Lawrence E. Schmidt, and John G. Disney, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Joseph C. Wich, Jr., Esquire, Robert A. Hoffman, Esquire, and Judith A. Arnold, Esquire, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, MD 21204, Counsel for Protestants; Cronridge Investors, et al, 5270 Executive Drive, Catonsville, MD 21228, Protestants; Julius W. Lichter, Esquire and Howard L. Alderman, Jr., Esquire, Levin & Gann, P.A., Suite 113, 305 W. Chesapeake Avenue, Towson, MD 21204, Counsel for Developer; Daniel G. Schuster, 52 New Plant Court, Owings Mills, MD 21117, Developer; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Bldg., Towson, MD 21204, a copy of which Notice is attached hereto and prayed that it be made a part hereof.

Linda Lee M. Kuzmaul  
Linda Lee M. Kuzmaul, Legal Secretary  
County Board of Appeals of Baltimore County  
Room 315, County Office Bldg., Towson,  
Maryland 21204 (301) 687-3180



Schuster Concrete, et al, File No. 90-CG-741  
Case Nos. CBA-89-124, 89-464-A & 89-506-SPH

2.

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Joseph C. Wich, Jr., Esquire, Robert A. Hoffman, Esquire, and Judith A. Arnold, Esquire, Venable, Baetjer & Howard, 210 Allegheny Ave., Towson, MD 21204, Counsel for Protestants; Cronridge Investors, et al, 5270 Executive Drive, Catonsville, MD 21228, Protestants; Julius W. Lichter, Esquire and Howard L. Alderman, Jr., Esquire, Levin & Gann, P.A., Suite 113, 305 W. Chesapeake Avenue, Towson, MD 21204, Counsel for Developer; Daniel G. Schuster, 52 New Plant Court, Owings Mills, MD 21117, Developer; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, Towson, MD 21204 on this 28th day of February, 1990.

*Linda M. Kuzmaul*  
Linda M. Kuzmaul, Legal Secretary  
County Board of Appeals of Baltimore County



County Board of Appeals of Baltimore County  
COUNTY OFFICE BUILDING, ROOM 315  
111 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
(301) 887-3180

February 28, 1990

Julius W. Lichter, Esquire  
Howard L. Alderman, Jr., Esquire  
Levin & Gann, P.A.  
Suite 113  
305 W. Chesapeake Avenue  
Towson, Maryland 21204

Re: Case Nos. 89-464-A & 89-506-SPH & CBA-89-124 (Schuster Concrete Cases)  
Dear Messrs. Lichter and Alderman:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

*Linda M. Kuzmaul*  
Linda M. Kuzmaul  
Legal Secretary

Encl. Daniel G. Schuster  
cc: Hoff & Antonucci, Inc.  
Mr. Neal Fitzsimmons  
Ms. Lisa Keir  
Dr. Alan Schneider  
Charles C. Harwood, Jr.  
Ms. Karen Rabins  
Toni Krometis  
E.J. Fitzsimmons, Jr.  
Robert E. Covey  
David L. Thomas  
Steve Wallis  
P. David Fields  
Pat Keller  
J. Robert Haines  
Ann M. Nastarowicz  
James E. Dyer  
W. Carl Richards, Jr.  
Docket Clerk - Zoning

Current Planning  
Developers Engineering Division  
Economic Development Commission  
Nancy West, Asst. County Attorney  
Arnold Jabl - County Attorney



County Board of Appeals of Baltimore County  
COUNTY OFFICE BUILDING, ROOM 315  
111 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
(301) 887-3180

February 28, 1990

Joseph C. Wich, Jr., Esquire  
Robert A. Hoffman, Esquire  
Judith A. Arnold, Esquire  
Venable, Baetjer & Howard  
210 Allegheny Avenue  
Towson, Maryland 21204

Re: Case Nos. 89-464-A & 89-506-SPH & CBA-89-124 (Schuster Concrete Cases)  
Dear Messrs. Wich and Hoffman, and Ms. Arnold:

In accordance with Rule B-7(a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. In addition, the cost incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in Court, in accordance with Rule B-7(a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

*Linda M. Kuzmaul*  
Linda M. Kuzmaul, Legal Secretary

Encl. Cronridge Investors  
cc: James F. Knott  
Mark L. Levy  
Edward A. St. John  
James K. Flannery, Jr.  
Nancy Bruno  
Cronridge Lane Ltd. Partnership  
Seven, Eight and Nine Cronridge Assoc.  
Ltd. Partnerships

February 28, 1990

BILLED TO: Joseph C. Wich, Jr., Esquire  
Robert A. Hoffman, Esquire  
Judith A. Arnold, Esquire  
Venable, Baetjer & Howard  
210 Allegheny Avenue  
Towson, MD 21204

Cost of certified documents in Case No. CBA-89-124 (Schuster Concrete) . . . \$71.00

MAKE CHECKS PAYABLE TO: Baltimore County, Maryland

REMIT TO: County Board of Appeals  
Room 315, 111 W. Chesapeake Avenue  
Towson, Maryland 21204

IN THE MATTER OF DANIEL G. SCHUSTER, INC./JOSEPH L. CARDINALE and CRONRIDGE INVESTORS, et al., PROPERTY LOCATED ON SOUTH SIDE OF CRONDALL LANE, 468' EAST OF C/O OF OWINGS MILLS BOULEVARD (3717 CRONDALL LANE)  
County Board of Appeals of Baltimore County, Case Nos. CBA-89-124, 89-464-A, and 89-506-SPH

ORDER FOR APPEAL

Cronridge Investors, Owings Mills III General Partnership, Crondall Lane Limited Partnership, Owings Mills Commerce Centre Limited Partnership, Seven Crondall Associates Limited Partnership, Eight Crondall Associates Limited Partnership, and Nine Crondall Associates Limited Partnership, owners of property in the immediate vicinity of the property at issue in this case, who were all parties to the proceedings before the County Board of Appeals and are aggrieved by the Board's February 5, 1990 Opinion and Order, pursuant to Maryland Rule B2, hereby appeal from that Opinion and Order.

The undersigned hereby certify that on February 23, 1990, prior to the filing of this Order, a copy of this Order for Appeal was served on the County Board of Appeals of Baltimore County.

*Joseph C. Wich, Jr.*  
Joseph C. Wich, Jr.  
*Robert A. Hoffman*  
Robert A. Hoffman

*Judith A. Arnold*  
Judith A. Arnold  
Venable, Baetjer & Howard  
210 Allegheny Avenue  
Towson, Maryland 21204  
(301) 823-4111  
Attorneys for Appellants

IN THE MATTER OF SCHUSTER CONCRETE /JOSEPH L. CARDINALE, ET AL /CRONRIDGE INVESTORS, INC., ET AL  
RE: PROPERTY LOCATED ON THE SOUTH SIDE OF CRONDALL LANE, 468' EAST OF THE CENTERLINE OF OWINGS MILLS BLVD. (3717 CRONDALL LANE)  
4th ELECTION DISTRICT  
3rd CONGRESSIONAL DISTRICT  
RE: CRG DECISION AND PETITIONS FOR VARIANCE AND SPECIAL HEARING

BEFORE THE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

CASE NO. CBA-89-124

AND

CASE NO. 89-464-A and NO. 89-506-SPH

OPINION

The legal morass known as "In Re Schuster Concrete" comes to the Board as a consolidation of three matters considered below. Specifically, the Board has before it an appeal from the decision of the County Review Group (hereinafter CRG) dated April 6, 1989 wherein the plan was approved; an appeal from the decision of the Deputy Zoning Commissioner dated July 21, 1989 which granted certain variances; and an appeal from the decision of the Deputy Zoning Commissioner of same date which denied a Petition for Special Hearing. As indicated above, the Board consolidated these cases for the purpose of hearing and deliberation in that all of the issues presented arise from the prospective development of that property known as 3717 Crondall Lane.

The Appellee herein, Schuster Concrete, proposes to construct a concrete batching plant at the above-referenced site. In order to commence construction of same in accordance with its plans, the Appellee requires CRG approval as well as certain variances. In opposition to the project, a number of neighboring protestants petitioned the Zoning Commissioner for a special hearing, maintaining that the use proposed was not permissible under the Baltimore County Zoning Regulations (hereinafter B.C.Z.R.). These protestants, the Appellants herein, have appealed the approvals granted as well as the denial of their Petition for Special Hearing.

Case No. CBA-89-124 /89-464-A /89-506-SPH  
Schuster Concrete /Joseph L. Cardinale, et al /  
Cronridge Investors, Inc., et al

2.

The subject site consists of 10.37 acres and is zoned M.L.-I.M. The property is served by a 700-foot panhandle drive situated on its western boundary accessing Crondall Road on its northern boundary. The Appellee is desirous of constructing a concrete batching plant with accessory office and warehouse space which will service his present concrete business. By definition a concrete batching plant is a facility which combines the raw materials necessary to produce unformed, wet concrete. Although the Board must consider all the issues generated by the numerous appeals before it, the threshold consideration to be addressed arises out of the Appellants' Petition for Special Hearing. Quite simply stated, the Appellants maintain that a concrete batching plant is not permissible under Section 253.1 of the B.C.Z.R. If they are correct, all other issues are moot.

B.C.Z.R. Section 253.1 sets forth uses permitted as of right in an M.L. zone. Under 253.1.A.9, the following use is described, "concrete-products manufacture, including manufacture of concrete blocks or cinder blocks." The Appellants maintain in support of their Petition for Special Hearing that the above-described use does not provide for the manufacture of raw concrete. That is, 253.1.A.9 permits only a facility which manufactures finished products made of concrete.

In support of their Petition, the Appellants submitted memorandums before both this Board and the Deputy Zoning Commissioner. The reasons set forth in those memorandums are articulately stated and well-reasoned. In essence, the Appellants maintain that by use of the hyphen between the words "concrete" and "products," this section permits only a facility that uses concrete as a basic raw material to produce formed and marketable concrete products. The Appellants also compare and contrast the language of 253.1.A.9



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Schuster Concrete /Joseph L. Cardinale, et al /  
Cronridge Investors, Inc., et al

with other uses described within 253.1.A. The Appellants argue that the grammatical construction of the subject section, coupled with an overview of all of the uses prescribed in 253.1.A, requires a conclusion that a concrete batching plant is not permissible.

In addition to their argument as to the construction of the language of the relevant section of the B.C.Z.R., the Appellants also rely upon the testimony of Neal FitzSimons in support of their Petition for Special Hearing. Mr. FitzSimons is a consulting civil engineer and geologist, and self-styled "concrete expert." Although the record of this case speaks clearly as to the nature of Mr. FitzSimons' testimony, it may be paraphrased as a discussion and explanation of the operational differences of a concrete batching plant and finished concrete products facility. Specifically, Mr. FitzSimons described the differing manufacturing process involved as well as the different machinery and components required in each.

In opposition to the Appellants' Petition for Special Hearing, Counsel for the Appellee, Schuster Concrete, also submitted memorandum to this Board which incorporated by reference previous memorandum filed with the Deputy Zoning Commissioner. As with the Appellants, these memorandums are well-reasoned and clearly articulate the position of the Appellee. Essentially, the Appellee contends that the reasoning adopted by the protestants is not supported by a proper interpretation of the B.C.Z.R. The Appellee maintains that the wet, unformed concrete which is manufactured by the process employed at a batching plant is in fact a finished "concrete product."

The interpretation of B.C.Z.R. Section 253.1.A.9 is the crux of the issue before this Board. The importance of that issue is demonstrated by the reliance of both parties on the rule set forth in Kowalski v. Lamar, 25 Md. App. 493, 334 A.2d 536 (1975). In Kowalski, the Court of Special Appeals

Case No. CBA-89-124 /89-464-A /89-506-SPH  
Schuster Concrete /Joseph L. Cardinale, et al /  
Cronridge Investors, Inc., et al

acknowledged that the only uses permitted in any designated zone are those permitted as of right or by special exception. Thus, if the proposed operation does not come within the definition of 253.1, the project must fail.

In entertaining the arguments before us, the Board is guided by the tenants of statutory construction enunciated by the appellate courts of this State. In her Opinion, the Deputy Zoning Commissioner cited those principles as comprehensively stated by the Court of Appeals in State v. F. Britz, 276 Md. 416 (1975), cert. denied, 425 U.S. 942 (1976). Within Fabritz, the Court stated:

"The cardinal rule in the construction of statutes is to effectuate the real and actual intention of the Legislature. Purify v. Merc-Safe Deposit & Trust, 273 Md. 58, 327 A.2d 483 (1974); Scoville Serv., Inc. v. Comptroller, 269 Md. 390, 306 A.2d 534 (1973); Height v. State, 225 Md. 251, 170 A.2d 212 (1961). Equally well settled is the principle that statutes are to be construed reasonably with reference to the purpose to be accomplished. Walker v. Montgomery County, 244 Md. 98, 223 A.2d 181 (1966), and in light of the evils or mischief sought to be remedied, Mitchell v. State, 115 Md. 360, 80 A.2d 1020 (1911); in other words, every statutory enactment must be considered in its entirety, and in the context of the purpose underlying [its] enactment." Giant of Md. v. State's Attorney, 267 Md. 501 at 509, 298 A.2d 246, at 432 (1973). Of course, a statute should be construed according to the ordinary and natural import of its language, since it is the language of the statute which constitutes the primary source for determining the legislative intent. Crosvenor v. Supervisor of Assess., 271 Md. 232, 315 A.2d 159 (1974); Height v. State, supra. Where there is no ambiguity or obscurity in the language of a statute, there is usually no need to look elsewhere to ascertain the intention of the Legislature. Purify v. Merc-Safe Deposit & Trust, supra. Thus, where statutory language is plain and free from ambiguity and expresses a definite and sensible meaning, courts are not at liberty to disregard the natural import of words with a view towards making the statute express an intention which is different from its plain meaning. Gatwood v. State, 244 Md. 609, 224 A.2d 677 (1966). On the other hand, as stated in Maguire v. State, 192 Md. 615, 623, 65 A.2d 299, 302 (1949), "[a]dherence to the meaning of words does not require or permit isolation of words from their context." [Emphasis added]

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Schuster Concrete /Joseph L. Cardinale, et al /  
Cronridge Investors, Inc., et al

meaning of the plainest words in a statute may be controlled by the context.... In construing statutes, therefore, results that are unreasonable, illogical or inconsistent with common sense should be avoided whenever possible consistent with the statutory language, with the real legislative intention prevailing over the intention indicated by the literal meaning. B. F. Saul Co. v. West End Park, 250 Md. 707, 246 A.2d 591 (1968); Sanza v. Md. Board of Censors, 245 Md. 319, 226 A.2d 317 (1967); Height v. State, supra. Fabritz, p. 421-422

The Fabritz decision continues to be well regarded as proper authority in this State. See, e.g., Wynn v. State, 313 Md. 533 (1988). While the overriding principles set forth in Fabritz are to be followed, this Board finds particularly instructive the consistent language enunciated in U.S. v. Brown, 333 U.S. 18, 68 S.Ct. 376, 92 L.Ed. 442 (1948). Within Brown, the Court stated:

"The canon in favor of strict construction is not an inexorable command to override common sense and evident statutory purpose. It does not require magnified emphasis upon a single ambiguous word in order to give it a meaning contradictory to the fair import of the whole remaining language...." (emphasis added) pp. 25-26; 380

Applying these tenants and the Board's collective common sense, we must conclude that the language within 253.1.A.9 of the B.C.Z.R. allows a concrete batching facility as a permitted use. As pointed out in the Appellee's memorandum, the mere evaporation of water from the unformed concrete would result in a hardened, finished product. We do not believe that the Legislature intended to so narrowly distinguish these uses. Thus, the Board is persuaded that the Petition for Special Hearing should be denied and will so order. In that this Board has determined that a concrete batching plant is permissible under 253.1.A.9, it need not address the alternative theories set forth by the Appellees which cite 253.1.A.54 and 253.1.E as their basis.

Having determined that threshold issue, the Board then turns its attention to the Petitions for Variance and the approved CRG plan before us.

Case No. CBA-89-124 /89-464-A /89-506-SPH  
Schuster Concrete /Joseph L. Cardinale, et al /  
Cronridge Investors, Inc., et al

As to the variances, the Appellee requests variances from Sections 255.1, 238.1 and 238.4 of the B.C.Z.R. Specifically, Appellee seeks relief to permit a front yard setback of 0 feet in lieu of the required 25 feet; to permit a side yard setback of 8 feet in lieu of the required 30 feet; and to permit side yard setbacks between buildings /uses of 42 feet in lieu of 60 feet.

In support of these petitions, the Board heard from the proprietor of the proposed business, Daniel G. Schuster. Mr. Schuster described his experience in the concrete industry and the need for this facility to support his concrete business. He described the subject property fully and explained the proposed features of the improvements. He further articulated the reasons that would justify the granting of the variances as required by Section 307 of the B.C.Z.R.

Thomas J. Hoff, a landscape architect, also testified in support of the variances and described the landscape plan. In his view, strict compliance with the setback requirements from which the Appellee seeks variance would result in practical difficulty. In Mr. Hoff's view, the site would be undevelopable as a batching concrete plant if compliance with the appropriate setback regulations was required. Although we are persuaded to accept the testimony of Messrs. Schuster and Hoff and grant the petitioned variances, we do so with some trepidation. It is apparent that Mr. Schuster has in the past disregarded the requirements of Baltimore County and proceeded with his improvements without first obtaining the requisite approvals and permits. Quite frankly, the Board believes that Mr. Schuster may well perceive our granting of these variances as approval of his former conduct. Nothing could be further from the truth. The Board finds the Appellee's improvements without permission reprehensible but must adjudge the petitioned variances on their own merits. After due

Case No. CBA-89-124 /89-464-A /89-506-SPH  
Schuster Concrete /Joseph L. Cardinale, et al /  
Cronridge Investors, Inc., et al

consideration of the testimony and evidence offered, we are persuaded that they should be granted.

Lastly, the Board must consider the protestants' appeal of the decision of the CRG, which granted approval of the petitioner's plan. As is the normal custom before the Board, the Appellee produced the CRG minutes and approved plan. As indicated above, Mr. Schuster fully described the nature of the plan. The Appellee also produced numerous witnesses, including Brenda L. Crabbs and neighbors of Mr. Schuster's current operation, in support of the CRG plan. In opposition, many of the neighboring protestants themselves testified about their fears for installation of a concrete batching plant in proximity to their businesses. The Board will not repeat herein the lengthy testimony of these witnesses but will allow the record to speak for itself.

After due consideration of that evidence, and application of the presumptive correctness standard set forth in Section 22-61 of the Baltimore County Code, the Board is persuaded that the CRG acted properly. Thus, the Board will affirm the decision of the CRG. However, the Board has considered the fears of the protestants regarding the impact of this facility. After considering the lengthy testimony regarding the proposed use and the possible impacts on this locale, the Board is persuaded that certain restrictions should be imposed. Thus, several of the restrictions contained within the Deputy Zoning Commissioner's decision will be imposed herein, as we believe they are well-founded and proper.

#### ORDER

It is therefore this 5th day of February, 1990 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special

Case No. CBA-89-124 /89-464-A /89-506-SPH  
Schuster Concrete /Joseph L. Cardinale, et al /  
Cronridge Investors, Inc., et al

Hearing be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petitions for Variance be and the same are hereby GRANTED; and

IT IS FURTHER ORDERED that the decision of the County Review Group which approved the plan be AFFIRMED; and

IT IS FURTHER ORDERED that the following restrictions be imposed:

1. All commercial trucks shall be washed or hosed off prior to their departure from the subject site.
2. A gas-powered vacuum/sweeper and/or other acceptable means of removing debris (i.e., hand-swept) shall be run on that portion of Crondall Lane abutting Petitioner's property as required on days which the subject batching plant is receiving and/or discharging commercial trucks. A minimum distance of 50 feet within each side of the entrance to the property shall be kept free of debris by Petitioner.
3. Petitioner shall erect along the eastern boundary of the subject property a screening/barrier wall, similar in type to the wall paralleling sections of the northeast loop of the Baltimore Beltway (I-695), which shall be a minimum of 16 feet in height. Said wall shall be constructed contemporaneously with the construction of the proposed batching plant.
4. Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett, Chairman

Lawrence E. Schmidt

John G. Disney



County Board of Appeals of Baltimore County  
COUNTY OFFICE BUILDING, ROOM 315  
1111 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
(301) 887-3180  
February 5, 1990

John B. Howard, Esquire  
VENABLE, BAETJER AND HOWARD  
210 Allegheny Avenue  
Towson, MD 21204

Dear Mr. Howard:

Enclosed is a copy of the final Opinion and Order issued this date by the County Board of Appeals in the subject matter.

Sincerely,

Kathleen C. Weidenhammer/blank  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Robert A. Hoffman, Esquire  
Judith A. Arnold, Esquire  
Cronridge Investors  
Mr. James F. Knott  
Mr. Mark L. Levy  
Edward A. St. John  
Mr. James K. Flannery, Jr.  
Ms. Nancy Bruno  
Crondall Lane Ltd. Partnership  
Seven Crondall Associates Ltd. Partnership  
Eight Crondall Associates Ltd. Partnership  
Nine Crondall Associates Ltd. Partnership  
Julius W. Lichter, Esquire  
Howard L. Alderman, Jr., Esquire  
Mr. Daniel G. Schuster  
Hoff & Antonucci, Inc.  
Mr. Neal FitzSimons  
Ms. Lisa Keir  
Dr. Alan Schneider

Mr. Charles C. Harwood, Jr.  
Ms. Karen Rabins  
Robert E. Covahay  
David L. Thomas  
Ms. Toni Kromotis  
Ms. E. J. Fitzsimmons, Jr.  
P. David Fields  
Pat Keller  
J. Robert Haines  
Ann M. Mastarowicz  
James E. Dyer  
W. Carl Richards, Jr.  
Pocket Clerk - Zoning  
Arnold Jablon, County Attorney  
Current Planning  
Dev. Eng. Division  
Economic Development Commission  
Steve Wallis  
Nancy C. West, Esquire

In re: SCHUSTER CONCRETE \* BEFORE THE  
S/S of Crondall Lane, 468' E \* COUNTY BOARD OF APPEALS  
of the c/1 of Owings Mills \* OF  
Boulevard (3717 Crondall Lane) \*  
4th Election District \* BALTIMORE COUNTY  
3rd Councilmanic District \* Case Nos.: CBA-89-124  
89-464-A  
89-506-SPH

#### SUPPLEMENTAL MEMORANDUM OF CRONRIDGE INVESTORS, ET AL.

Cronridge Investors, Owings Mills III General Partnership, Crondall Lane Limited Partnership, Owings Mills Commerce Centre Limited Partnership, Seven Crondall Associates Limited Partnership, Eight Crondall Associates Limited Partnership, and Nine Crondall Associates Limited Partnership (collectively, the "Appellants") appeal here from the April 6, 1989 action of the County Review Group (the "CRG") in approving a development plan, and from the July 21, 1989 decision of the Deputy Zoning Commissioner granting the Petition for Variances in Case No. 89-464-A and denying the Petition in Case No. 89-506-SPH, all with respect to the subject property. The property is owned by Appellee Joseph L. Cardinale and leased to Appellee Daniel G. Schuster, Inc. ("Schuster"), which seeks approvals in order to use the property for a concrete batching plant, with an accompanying warehouse and offices.

The subject property is zoned ML-1M, and it is the Appellant's primary contention here that a concrete batching plant is a use not permitted, either by right or by special



exception, and is therefore prohibited, as a principal use in an ML-IM zone. A concrete batching plant, being an industrial or manufacturing use not specifically listed in the Baltimore County Zoning Regulations ("BCZR"), is permitted only in the more intense MH zone, under the catchall in §253.3 of the BCZR ("Any other industrial or manufacturing use..."). For this reason, the Deputy Zoning Commissioner's decision in consolidated Case Nos. 89-464-A and 89-506-SFH was clearly erroneous as a matter of law, as was the CRG's approval of Schuster's proposed development plan.

The Appellants have heretofore set forth their arguments in two memoranda, dated June 22 and July 7, 1989, which were submitted to the Deputy Zoning Commissioner. They incorporate those arguments herein by reference and will in this Memorandum merely restate their position in summary form, in light of the evidence produced before the County Board of Appeals (the "Board") at its hearing on October 19, 1989.

I. The Evidence Clearly Established That a Concrete Batching Plant and a Concrete Block Plant Are Two Distinct Uses Having Very Different Neighborhood Impacts.

As the Board acknowledged on the basis of clear and convincing evidence produced at the October 19, 1989 hearing, including the testimony of Appellants' witness Neal FitzSimons, a civil engineer with extensive knowledge and experience concerning concrete and the concrete industry, there are numerous differences between a concrete batching plant, on the one hand, and a concrete block or other concrete

products plant, on the other. The marketable product of a concrete batching plant is unformed, wet concrete or a combination of ingredients that can be mixed with water to create unformed, wet concrete. By way of contrast, a concrete block or other concrete products plant manufactures formed and finished, marketable products using wet concrete as a basic raw material.

The two uses were shown to have distinct characteristics in terms of the height and physical appearance of plant buildings, the type and pattern of truck traffic generated, the nature of aggregate storage, and the amount of noise and dust generated. In addition, testimony established that the operations involved in a concrete block plant are largely performed indoors, whereas many of those involved in a concrete batching plant (e.g., the delivery of wet concrete or concrete ingredients into mixing trucks) must necessarily be performed outdoors. In nearly every respect, the concrete batching plant was shown to be more intrusive and likely to create more negative impacts on surrounding businesses and residences.

In light of this largely unchallenged and unchallengeable evidence, the dispute between the Appellants and the Appellees reduces itself to a question of statutory construction: whether a concrete batching plant, despite its distinct and more intrusive character, is a use permitted by §253.1 of the BCZR. If not, the parties seem to agree that the use is

prohibited by the rule set forth in *Kowalski v. Lamar*, 25 Md. App. 493, 334 A.2d 536 (1975) ("the only uses permitted ... are those designated as uses permitted as of right and uses permitted by special exception. Any use other than those permitted and being carried on as of right or by special exception is prohibited").

II. A Concrete Batching Plant Is Not a Use Permitted by §253.1.A.9.

The Appellees have directed most of their argument in these proceedings toward convincing the Deputy Zoning Commissioner and the Board that the concrete batching plant proposed by Schuster will fall within the scope of §253.1.A.9 of the BCZR, which permits in the ML zone, as a matter of right, "concrete-products manufacture, including manufacture of concrete blocks or cinder blocks". The Appellants insist that this section, viewed in the context of §253.1.A as a whole, cannot properly be read to authorize the establishment in an ML zone of a facility that produces unformed, wet concrete as an end-product. Rather, §253.1.A.9, properly construed, authorizes the establishment of a plant that uses concrete as a basic raw material to produce formed and marketable concrete products.

Examination of §253.1.A will readily show that Subparagraph 9 is parallel in its grammatical construction to Subparagraphs 7, 10, 16, 17, 18, 19, 22, 28, 30, 35, 38, 45, 48, 51, and 52. In each of these cases, the Zoning Regulations set out a hyphenated word beginning with the name

of a raw material (whether or not that "raw material" may itself be a manufactured substance) and ending with "products"; this compound word modifies the following noun, "manufacture".<sup>1</sup> What each of these subparagraphs permits, the Appellants submit, is a facility involving light manufacturing and assembly processes in the conversion of the raw material into finished products that are clearly recognizable as having the raw material as their primary component.

Subparagraph 9 and the other subparagraphs mentioned in the preceding paragraph can be contrasted with Subparagraphs 5, 11, 12, 23, 25, 26, 31, 32, 36, 44, and 49 of §253.1.A. These latter subparagraphs again share a common grammatical construction, but one that is different from the construction of the subparagraphs mentioned in the preceding paragraph. In the latter subparagraphs, the noun "manufacture" is preceded by a single or compound modifier not containing the word "products". In these instances, the modifier is itself the name of a finished product, such as candy, ice, jewelry, musical-instruments, or toys. What each of these subparagraphs permits is a facility involving light manufacturing and assembly processes in the production of this finished product.

<sup>1</sup> According to Webster's New World Dictionary (2d college ed. 1980), p. 1683, a hyphen is used between parts of a compound modifier preceding a noun, except when the compound includes an adverb ending in "ly".

Had the drafters of §253.1.A intended to authorize the establishment in the ML zone of facilities for the production of concrete as a finished product, they would certainly have used a consistent grammatical construction and have listed "concrete manufacture" in that section. They did not do so. As the Appellants pointed out in footnote 2 of their July 7, 1989 Reply Memorandum and in their argument before the Board, the drafters of §253.1.A clearly had no more intention by Subparagraph 9 to authorize a concrete batching plant than they had by Subparagraph 28 to authorize a tannery, by Subparagraph 52 to authorize a sawmill, or by Subparagraph 53 to authorize a wrought-iron smelting plant.<sup>2</sup>

While counsel for the Appellees also suggest, as a secondary argument, that a concrete batching plant is permitted in the ML zone under §253.1.A.54 ("Other manufacture of articles of merchandise made from materials permitted to be used and made by processes permitted to be employed in the production activities more specifically listed above") or §253.1.E ("Combinations of the uses listed above"), these arguments merit little response. There was no credible evidence before the Board to establish that a concrete batching plant uses the same materials and processes as any

<sup>2</sup> Although §253.1.A.53 is not entirely consistent in its construction with Subparagraph 9 and the other subparagraphs mentioned on page 4, in that it does not include a hyphen between the initially named raw material and the word "products" (the hyphen appears instead between the two words that together constitute the name of the raw material), Subparagraph 53 was undoubtedly intended to be construed in the same manner as the others.

use listed in §253.1.A; and if a concrete batching plant is not permitted as a single use, it is certainly not permitted in combination with another use by virtue of §253.1.E.

III. Even If a Concrete Batching Plant Were Permitted in the ML Zone, the Evidence in This Case Would Not Support the Granting of Variances.

Although Appellants are confident that this Board will agree with their interpretation of §253.1.A, they also want to emphasize that the evidence produced at the Board's hearing showed again why no variances could properly be granted in this case. First, there was ample evidence from representatives of the Appellants, as well as from Dr. Schneider of Catalyst Research and Ms. Pontone of the Valleys Planning Council, that both businesses and residents in the vicinity of the subject property would be seriously and adversely affected by the concrete batching plant proposed by Appellee Schuster. Thus, variances could not be granted "in strict harmony with the spirit and intent" of the Zoning Regulations or "without substantial injury to public health, safety, and general welfare", as required by §307 of the BCZR.

What is more, the evidence produced before the Board eliminated any doubt as to the fact that whatever "practical difficulty or unreasonable hardship" Appellee Schuster might experience because of having to comply strictly with zoning requirements as to setbacks and building separation would be largely the result of its own choices and actions. Not only did Schuster acquire an option on a site that is too small,

too narrow, subject to too many development constraints, and otherwise unsuitable for the development it wishes to undertake (as the Board will recall, Schuster acquired an option on a 7.23-acre site, a large part of which is in a floodplain, leaving only 3.19 developable acres), but it subsequently proceeded to construct a reclamation facility and an aggregate storage area before obtaining, or even applying for, required permits. It would be totally unfair to other businesses and individuals that do their best to comply with the Zoning Regulations -- indeed, it would be unconscionable -- to grant relief to a company that has been so clearly responsible as Schuster for its own difficulties. In their earlier memoranda, the Appellants cited numerous Maryland cases that support their position on this point.

Finally, the Board should not lose sight of the fact that, as far as the record reveals, Schuster has not yet invested in the purchase of the subject property. As Appellants pointed out in their Reply Memorandum, the company is not "locked in" to this location. Why, therefore, should the Zoning Regulations be strained to accommodate a use that does not fit the site and is totally incompatible with the neighborhood?

CONCLUSION

For all of the reasons stated in this Memorandum, as well as in their two previous memoranda to the Deputy Zoning Commissioner -- but most especially because, as a matter of law, a concrete batching plant is not permitted as a principal

use in the ML zone -- Appellants urge the Board to reverse the CRG's approval of Schuster's development plan and the Deputy Zoning Commissioner's decision in Case Nos. 89-464-A and 89-506-SFH.

Respectfully submitted,

*John B. Howard*

*Robert A. Hoffman*

*Quinn A. Arnold*

Judith A. Arnold

Venable, Baetjer and Howard

210 Allegheny Avenue

P. O. Box 5517

Towson, Maryland 21204

(301) 823-4111

Attorneys for Appellants,

Cronridge Investors, et al.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 1989, a copy of the foregoing Supplementary Memorandum was served by mail, first-class postage prepaid, on the following:

Julius W. Lichter, Esquire  
Edward L. Alderman, Jr., Esquire  
Levin & Gann, P.A.  
113 Chesapeake Building  
305 W. Chesapeake Avenue  
Towson, MD 21204

*Quinn A. Arnold*

Judith A. Arnold

MEM00105.JAA



IN RE: PETITION FOR ZONING VARIANCE \* BEFORE THE  
S/S Crondall Lane, 468' E of \* BOARD OF APPEALS  
the c/1 of Owings Mills \* OF  
Boulevard (3717 Crondall Lane) \* BALTIMORE COUNTY  
4th Election District  
3rd Councilmanic District  
Joseph L. Cardinale, et al \*  
Petitioners \*  
Case Nos. 89-464-A  
89-506-SPH  
CBA-89-124

IN RE: PETITION FOR SPECIAL HEARING \*  
S/S Crondall Lane, 468' E of \*  
the c/1 of Owings Mills \*  
Boulevard (3717 Crondall Lane) \*  
4th Election District \*  
3rd Councilmanic District \*  
Cronridge Investors, Inc., et al \*  
Petitioners \*

IN RE: DANIEL SCHUSTER, INC. \*  
CRG Decision \*

\* \* \* \* \*

#### APPELLEE'S POST-HEARING MEMORANDUM

Daniel G. Schuster, Inc., Contract Purchaser and Appellee herein, by its attorneys Julius W. Lichter, Howard L. Alderman, Jr., and Levin & Gann, P.A., respectfully submits this Post-Hearing Memorandum in lieu of closing argument.

#### STATEMENT OF THE CASE

Daniel G. Schuster, Inc., ("Appellee") filed a development plan pursuant to the County Development Regulations, for the erection and operation of a concrete batch plant and warehouse/office uses, together with accessory uses and structures, on the property which it is leasing on Crondall Lane. Appellee is the lessee/contract purchaser of the subject property

and is also the lessee of the building immediately to the north. The CRG granted final approval of Appellee's CRG Plan on April 6, 1989 which confirmed the Zoning Office's approval of the concrete batch plant use in the ML-IM zone.

Appellee was the Petitioner before the Deputy Zoning Commissioner for three variances needed to permit construction and operation of the improvements as shown on the CRG Plan. Two of the requested variances were for improvements already in existence and shown as such on the CRG Plan submitted to the CRG. Appellee acknowledges that building permit applications were filed for the existing improvements after they were constructed.

The proposed facility as well as the surrounding properties are located in an ML-IM zone.

#### PETITION FOR ZONING VARIANCE - NEW PLANT COURT

Appellants place improper emphasis on the language of a 1987 decision of then Deputy Zoning Commissioner Jean Jung (Case No. 87-446-A) pertaining to a variance requested by Daniel G. Schuster, et al. In that case, the Schuster's sought area variances from the BCZR to permit the addition of a cement storage silo to the existing concrete batch plant, which silo was to be constructed 63.75 feet in height with a rear yard setback of 25 feet in lieu of the permitted height and setback requirements of the regulations.

In granting the relief requested, Deputy Zoning Commissioner Jung conditioned the relief with the following restrictions:

- 1) The batching portion of the operation must remain accessory to the Petitioners' concrete construction

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business.

- 2) At any such time as the ownership of the property or the management of the concrete construction business should change, a public hearing will be required to determine whether the concrete batching plant may continue to operate in an accessory capacity and, indeed, whether a concrete batching plant may be allowed in an ML-IM zoned site under Section 253.1A of the BCZR or under Sections of the BCZR applicable at that time.

The issue of whether such a facility was a permitted principal use in a ML-IM zone was not before Commissioner Jung. Commissioner Jung opined that a hearing would be needed to decide such issue. Such a hearing was held in the case before you and Deputy Zoning Commissioner Nastarowicz ruled that the requested batching plant is a permitted use as of right. (Appellee's Exhibit No. 10). The Schuster New Plant Court facility had existed for more than two (2) years prior to the 1987 request for the Silo variance after obtaining all governmental approvals to construct and develop the concrete batch plant; the variance in that case was necessary as certain property neighboring the site was not zoned for manufacture or industrial uses. Notices of any violations of any law, requirement or regulation have not been issued with regard to this existing facility. In her Order, Commissioner Jung notes that approximately 1/3 of the concrete produced on New Plant Court was utilized on the Petitioner's construction jobs while approximately two-thirds (2/3) of the concrete was delivered to other contractors. Clearly, by the findings of the Order, the concrete batch plant is and was used primarily for the sale of concrete to construction jobs other to construction sites where the Petitioner was engaged as the

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concrete contractor.

#### PETITION FOR SPECIAL HEARING - USE ISSUE

Appellee was also the Respondent before the Deputy Zoning Commissioner in a Petition filed by Cronridge Investors, Inc., et al, Appellant's herein ("Appellants.") Appellants sought, by Petition for Special Hearing to have the Deputy Zoning Commissioner rule that Appellee's proposed use of the subject property was not permitted pursuant to its existing zoning classification. Both sides submitted post-hearing memoranda and responses thereto in lieu of closing argument before the Deputy Zoning Commissioner. Appellee has attached hereto, incorporated within, and made a part hereof, its post-hearing and responsive memoranda submitted to the Deputy Zoning Commissioner.

The Deputy Zoning Commissioner, in her written Order which has been stipulated to and introduced into evidence before this Board as Appellee's Exhibit No. 10 (and included herewith), dismissed Appellant's assertion that the proposed use of the subject site was incompatible with Appellant's existing uses in the area and that it was not specifically included as a permitted use pursuant to the Baltimore County Zoning Regulations (BCZR). The Appellee strongly contends that no standard of compatibility exists in the regulations. In applying long-standing basic principles of statutory construction, the Deputy Zoning Commissioner confirmed that the proposed uses were permitted as of right in a ML-IM zone. Additionally, the three variances requested were granted in accordance with established standards.

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Appellants agreed on the record at the outset of the hearing before you to limit their appeal of the approved CRG plan to the zoning use issue raised, and subsequently also approved in favor of Schuster before the Deputy Zoning Commissioner, and to also limit their appeal of the variances granted to the principal issue of the permitted use status of the proposed concrete batch plant.

Appellants would have this Board draw the conclusion that, in 1987, Deputy Zoning Commissioner Jung had a proper question before her regarding the batching plant as a principal use which she did not address. Such was not the case; there was no Petition for Special Hearing filed to rule on whether or not a batching plant is a permitted use in a ML-IM zone. Nor is the language of the Order of the Deputy Zoning Commissioner in Case No. 87-446-A regarding New Plant Court site controlling upon or persuasive to the Baltimore County Board of Appeals.

Contrasted to this is the Order of the present Deputy Zoning Commissioner. Based on a Petition for Special Hearing filed by Appellants, Commissioner Nastarowicz unequivocally held that a "batching plant is a permitted use as of right in this ML-IM", (Case No. 89-506-SPH - Deputy Zoning Commissioner's Order at page 6). The Commissioner found that the issue before her was not one subject to discretion, but was a pure issue of statutory construction. This decision confirms the position of the Zoning Office that the proposed use is permitted as of right; this issue was considered as part of the CRG process for the proposed use at

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Crondall Lane and as part of Mr. Schuster's development of its New Plant Court operation. No question regarding the proposed use as non-permitted was raised by the County officials considering the CRG plans. Whether or not Appellants "feel" that the proposed use is incompatible with offices constructed in a manufacturing zone is immaterial. The proposed use fits squarely within the uses permitted as of right in this zone and is completely consistent with the uncontradicted policy of the Zoning Commissioner (Policy BM-23) which holds that "the mixing of such ingredients as sand, gravel, cement, and water on the premises is considered manufacturing a product .... As a manufacturing use, this process must be located in a M.L. or M.H. zone." (Emphasis in original). This Board is encouraged by the Appellee to review Deputy Commissioner Nastarowicz's Order (Appellee's Exhibit No. 10) and its thorough treatment of the issue and the common law requirements of statutory construction.

#### PERMITTED USE V. ACCESSORY USE

Appellant's do not object to the presence of a concrete block facility at the subject site on Crondall Lane. In fact, Appellants, through the testimony of Mr. FitzSimons and various demonstrative photos, suggest that the more intensive use of a concrete block manufacture facility is, and should be, permitted as of right in a ML-IM zone. Mr. FitzSimons acknowledged that a key component of a concrete block manufacturing plant is a batching plant to produce the concrete. Moreover, the cross-examination of Mr. FitzSimons, together with the pictures of a

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block plant introduced as Appellee's Exhibit No. 15, are the best examples of the intensive use and level of material usage and traffic associated with a use Appellants contend is permitted as of right in a ML-IM zone. To suggest that the more intensive use of a concrete block manufacturing facility -- including the on-site batching plant to produce the concrete -- is permitted and is compatible with Appellant's existing uses, yet a small scale, enclosed batching plant is neither compatible or permitted is ludicrous, at best. Mr. FitzSimons suggests that the manufacturing of concrete as related to concrete products is akin to the making of iron or steel as related to wrought iron products. Such an analogy should not even be entertained by this Board. The highly intensive use of making hardened steel or iron is similar to the development of the ingredients which form the basis of concrete. Obviously, the excavation of stone and sand, the washing of sand, and the crushing of stone into a usable size aggregate are the intensive uses associated with concrete that the County Council restricts to the MH zone. Under certain circumstances, excavations are permitted only by Special Exception within a MH zone. (BCZR Sections 256.1 through 256.5). These processes, like a steel mill, are properly restricted to MH zones. Mr. Schuster is not seeking approval for any of the more intensive aspects described which are ultimately ingredients used in the manufacture of concrete. What is being sought is the combination of ingredients (developed or produced elsewhere) into concrete as a product.

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This Board should also be aware of the IM district which has been superimposed upon this property and the property surrounding it. Pursuant to BCZR Section 259.2.H, the "Industrial Major" district is evidence of the County Council's intention that this entire area of the County be developed with major industrial uses, be they principal or accessory in nature.

Appellants herein would have this Board fail to take notice of similar, co-existing land uses within Baltimore County. Perhaps the most stark analogy can be drawn to the Cockeysville Industrial Park, on Beaver Dam Road, which is located in close proximity to the Texas Quarry operations which include concrete batch plant, concrete products plant, asphalt (bituminous concrete) plant and the largest limestone quarry in Maryland. These operations are shown clearly in Appellee's Exhibit No. 15. Moreover, major office/manufacturing employers such as Becton-Dickinson Microbiology Systems, Inc., Biochemical Corporation and the AAI Corporation are located within 1/4 mile of the MH zoned Texas Quarry operations. The continued, highly successful co-existence of such uses negate any alleged concerns of Appellants who will be located at minimum 600 feet from the proposed facility.

Appellants are attempting to limit the uses in this ML-IM zone to only those uses which they believe are aesthetically pleasing and in harmony with their office park, which could or should be constructed in any of the business or office zones in the County. However, the uses of ML-IM zoned property have been

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denial, once again of Appellant's frivolous challenge of permitted use status is demanded.

Respectfully submitted,

Julius W. Lichter  
Howard B. Alderman, Jr.  
Lewin & Gann, P.A.  
113 Chesapeake Building  
305 W. Chesapeake Avenue  
Towson, Maryland 21204  
321-0600  
Attorneys for Appellee

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November 1989, a copy of the foregoing Appellee's Post-Hearing Memorandum and attachments thereto was mailed via first-class, postage-paid mail to John B. Howard, Esquire, Venable, Baetjer & Howard, 210 Allegheny Avenue, P.O. Box 5517, Towson, Maryland 21204.

Howard B. Alderman, Jr.

#### LEVIN & GANN

CALMAN A. LEVIN  
JANFORD C. GANN  
MELVIN A. STERNBERG  
JULIUS W. LICHTER  
SONNET WEINMAN  
ROBERT L. FRELLER  
ANDREW R. SANDLER  
RANDOLPH C. DREWIER  
CAROLE S. COULD  
MICHAEL J. KANDEL  
BRIAN J. FRANK  
HOWARD L. ALDERMAN, JR.  
JUDITH S. GANN  
MARC C. GANN  
MAVER E. CUTTMAN  
EDWARD B. STERNBERG  
\*ALSO ADMITTED IN DC  
\*ALSO ADMITTED IN NEW YORK

November 15, 1989

William T. Hackett, Chairman  
Baltimore County Board of Appeals  
Baltimore County Office Building  
Room 315  
111 West Chesapeake Avenue  
Towson, Maryland 21204

RE: Schuster Concrete CBA-89-124  
Jos. Cardinale et ux CBA-89-464A  
Cronridge Investors et al CBA-89-506-SPH

Dear Chairman Hackett:

I enclose herewith an original and two (2) copies of Appellee's Post-Hearing Memorandum filed in lieu of closing argument. Should the Board desire any further information, please do not hesitate to contact me.

Very truly yours,

Julius W. Lichter

JWL/LS  
Enclosures  
cc: All Board Members  
John B. Howard, Esquire

WILLIAM T. HACKETT

WILLIAM T. HACKETT

LEVIN & GANN  
A PROFESSIONAL ASSOCIATION  
305 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
301-321-0600  
FAX 301-296-2801

William T. Hackett, Chairman  
Baltimore County Board of Appeals  
Baltimore County Office Building  
Room 315  
111 West Chesapeake Avenue  
Towson, Maryland 21204

RE: Schuster Concrete CBA-89-124  
Jos. Cardinale et ux CBA-89-464A  
Cronridge Investors et al CBA-89-506-SPH

Dear Chairman Hackett:

I enclose herewith an original and two (2) copies of Appellee's Post-Hearing Memorandum filed in lieu of closing argument. Should the Board desire any further information, please do not hesitate to contact me.

Very truly yours,

Julius W. Lichter

JWL/LS  
Enclosures  
cc: All Board Members  
John B. Howard, Esquire

WILLIAM T. HACKETT

WILLIAM T. HACKETT

LEVIN & GANN  
A PROFESSIONAL ASSOCIATION  
305 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
301-321-0600  
FAX 301-296-2801

IN RE: PETITION FOR ZONING VARIANCE  
S/S Crondall Lane, 468' E of the  
C/I of Owings Mills Boulevard  
(3717 Crondall Lane)  
4th Election District  
3rd Councilmanic District  
Joseph L. Cardinale, et al.  
Petitioners

IN RE: PETITION FOR SPECIAL HEARING  
S/S Crondall Lane, 468' E of the  
C/I of Owings Mills Boulevard  
(3717 Crondall Lane)  
4th Election District  
3rd Councilmanic District  
Cronridge Investors, Inc., et al  
Petitioners

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a consolidation of Case Nos. 89-464-A and 89-506-SPH. In Case No. 89-464-A, the Petitioner, by Daniel Schuster, Inc., Contract Purchaser, requests a variance from Sections 255.1, 238.1 and 238.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front yard setback of 0 feet in lieu of the required 25 feet; from Sections 255.1 and 238.2 to permit a side yard setback of 8 feet in lieu of the required 30 feet; and from Sections 255.1, 238.2 and 102.2 to permit side yard setbacks between buildings/uses of 42 feet in lieu of the required 60 feet. The Contract Purchaser plans to construct a concrete batching plant, office and warehouse on the subject property. The Petitioners in Case No. 89-506-SPH, who are owners of property either on or adjacent to the Business Center in Owings Mills and are opposed to the batching plant in general, filed the Petition for Special Hearing requesting a determination that the proposed use of

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In support of the Petition for Special Hearing, Mr. FitzSimons testified that he has personally been involved in the construction of approximately six batching plants, none of which are located in Baltimore County. He testified regarding the operational aspects of batching plants in general, and made comparisons with this type of facility and concrete block plants; specifically, the storage and transportation of aggregate, and the mixing of aggregate with cement. Mr. FitzSimons testified he does not believe the proposed use can be classified as a use permitted as of right under Section 253.1A.9. He also testified regarding projected truck traffic for this type of facility.

Lisa Keir, Executive Director of the Valleys Planning Council, testified that in her opinion, the traffic, noise, dust and aesthetic impact resulting from the proposed batching plant would impact negatively on this community. Ms. Keir also objected to the proposed 80-foot silo which she contends will be seen from nearby residential communities.

Dr. Alan Schneider, General Manager of Catalyst Research, which is located on the northern side of Crondall Lane, testified that his company manufactures various medical products which require a relatively dust-free environment. He testified specifically regarding the filtration system utilized by his company and his concerns regarding dust generated by the proposed batching plant. Dr. Schneider also testified regarding the importance of maintaining an appropriate image for the benefit of the company's clients. He stated that the industrial nature of the batching plant would have an overall negative impact on his company. However, Dr. Schneider testified that no formal impact study had been conducted.

Mr. Flannery, President of Riparius Development Corporation, testified that his company has attempted to provide high-quality office

and laborator, space in the business center at Owings Mills, and in his opinion, the proposed operation is incompatible with the Center, and would otherwise have a negative impact on the campus-type environment of this business district. Mr. Flannery testified that the total capital investment in the business center was approximately \$80 to \$100 million dollars.

In support of the Petition for Zoning Variance, Mr. Schuster testified that he has been in the concrete business since 1972, having commenced the concrete ready-mix aspect of his business in 1985. Mr. Schuster stated that his current batching plant on New Plant Road, which is located in an M.L.-I.M. zone, is operating near full capacity, and he is therefore in need of an expansion facility. Mr. Schuster described the proposed facility as state-of-the-art with numerous safeguards protecting against air, water, and noise pollution. Mr. Schuster testified that unlike many batching plants, the proposed facility will be largely contained indoors with a conveyor belt transporting the aggregate directly into the main plant. He stated that this will eliminate the constant disturbance of outside aggregate bins which is generally associated with most batching plants. Mr. Schuster specifically described various, dust, dirt, and water collection systems which will be implemented at the facility. He testified that prior to leaving the facility, all trucks will be adequately washed and that vacuum/sweepers will be run at least three times daily in front of the plant.

Mr. Hoff testified that on-site parking for the employees and company trucks meets all B.C.Z.R. requirements. He stated that a screening wall, similar to the type paralleling sections of the Baltimore Beltway, would be erected on the eastern boundary of the subject property for purposes of creating a protective buffer for the Rosewood State Train

ing School of Maryland. Mr. Hoff testified that the Petitioner has had dialogue with Baltimore County regarding the dedication of the floodplain area, referenced on Petitioner's Exhibit 1, to the Baltimore County Department of Recreation and Parks. Mr. Hoff also stated that the proposed batching plant has received C.R.G. approval.

Messrs. Hoff and Schuster testified regarding the necessity for the requested variances. Testimony indicated that the aforementioned aggregate bins must be located in close proximity to the concrete plant to minimize airborne dust and noise. Mr. Schuster testified that the proposed conveyor belt system will not accommodate aggregate in a plant smaller than 100 feet in view of the required belt angle. He stated that the conveyor belt system is a key component in the reduction of dust and noise at the facility. Mr. Schuster testified that in view of the fact that the aggregate bins must be located in close proximity to the plant to minimize the dust and noise associated with the transportation of aggregate, a practical difficulty would exist if the requested variances were denied.

The conflict presented in this matter arises out of the mixed use nature of the M.L.-I.M. zone. This zone, pursuant to Section 253.1 of the B.C.Z.R. would permit, as of right, a poultry killing operation to be located next to an established medical clinic, also permitted in this zone as of right, the compatibility of which is certainly subject to differing opinions. However, the issue presented is not one which demands the equitable balancing of incompatible uses pursuant to discretion, but rather one requiring construction of the B.C.Z.R.

The basic principles of statutory construction were comprehensively set out by the Court of Appeals in *State v. Fabritz*, 276 Md. 416 (1975), *cert. denied*, 425 U.S. 942 (1976):

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the property for a concrete batching plant be disapproved as a principal use in an M.L. zone. A discussion of the issues raised in the variance case will be addressed after examining the issues raised in the Petition for Special Hearing.

In the Petition for Special Hearing, the Petitioners, by Mark L. Levy, Vice President, Continental Realty Investors Corporation; Dr. Alan A. Schneider, General Manager of Catalyst Research; and James K. Flannery, Jr., President, Riparius Development Corporation, appeared, testified and were represented by John B. Howard, Esquire and Robert A. Hoffman, Esquire. Also appearing on behalf of the Petition for Special Hearing were Lisa S. Keir, Executive Director, Valleys Planning Council; Charles C. Harwood, Jr., Pembroke Development; Nancy Bruno for Cronridge Investors, Inc.; and Neal FitzSimons, a Registered Professional Engineer. In the Petition for Zoning Variance, Daniel G. Schuster, owner and corporate officer of Daniel Schuster, Inc., Contract Purchaser of the subject property, appeared, testified, and was represented by Julius W. Lichter, Esquire and Howard L. Alderman, Jr., Esquire. Also appearing on behalf of the Petition for Zoning Variance was Thomas Hoff, a professional landscape architect.

Testimony indicated that the subject property, known as 3717 Crondall Lane, consists of 10.37 acres more or less, zoned M.L.-I.M. Testimony indicated that the subject site is serviced by a 700-foot parhandle drive situated on its western boundary, accessing Crondall Road on its northern boundary. The Contract Purchaser is desirous of constructing a concrete batching plant with office and warehouse space on the subject site which he testified will service his present concrete business. The batching plant is a concrete mixing facility which combines aggregate and concrete for both wet-load and transit mixing.

The cardinal rule in the construction of statutes is to effectuate the real and actual intention of the Legislature. *Purifoy v. Merc-Safe Dep. & Trust*, 273 Md. 58, 327 A.2d 483 (1974); *Scoville Serv., Inc. v. Comptroller*, 269 Md. 390, 306 A.2d 534 (1973); *Height v. State*, 225 Md. 251, 170 A.2d 212 (1961). Equally well-settled is the principle that statutes are to be construed reasonably with reference to the purpose to be accomplished, *Walker v. Montgomery County*, 244 Md. 98, 223 A.2d 181 (1966), and in light of the evils or mischief sought to be remedied, *Mitchell v. State*, 115 Md. 360, 80 A.2d 1020 (1911); in other words, every statutory enactment must be considered in its entirety, and in the context of the purpose underlying (its) enactment. *Giant of Md. v. State's Attorney*, 267 Md. 501 at 509, 298 A.2d 427, at 432 (1973). Of course, a statute should be construed according to the ordinary and natural import of its language, since it is the language of the statute which constitutes the primary source for determining the legislative intent. *Grosvenor v. Supervisor of Assess.*, 271 Md. 232, 315 A.2d 758 (1974); *Height v. State*, *supra*. Where there is no ambiguity or obscurity in the language of a statute, there is usually no need to look elsewhere to ascertain the intention of the Legislature. *Purifoy v. Merc-Safe Deposit & Trust*, *supra*. Thus, where statutory language is plain and free from ambiguity and expresses a definite and sensible meaning, courts are not at liberty to disregard the natural import of words with a view towards making the statute express an intention which is different from its plain meaning. *Gateswood v. State*, 244 Md. 609, 224 A.2d 677 (1966). On the other hand, as stated in *Maguire v. State*, 192 Md. 615, 623, 65 A.2d 299, 302 (1949), "[a]dherence to the meaning of words does not require or permit isolation of words from their context..." (since) the meaning of the plainest words in a statute may be controlled by the context... In construing statutes, therefore, results that are unreasonable, illogical or inconsistent with common sense should be avoided whenever possible consistent with the statutory language, with the real legislative intention prevailing over the intention indicated by the literal meaning. *B. F. Saul Co. v. West End Park*, 250 Md. 707, 246 A.2d 591 (1968); *Sanza v. Md. Board of Censors*, 245 Md. 319, 226 A.2d 317 (1967); *Height v. State*, *supra*.

The application of the above principles to the B.C.Z.R. results in a clear finding in the Deputy Zoning Commissioner's opinion that the proposed batching plant is a permitted use as of right in this M.L.-I.M.



zone, pursuant to Sections 253.1.A.9 and 253.1.A.54 of the B.C.Z.R. The totality of the testimony, evidence, submitted briefs and interpretive history of the Zoning Office established that "concrete" is a "manufactured product" within the purview of Section 253.1.A.9 and therefore permitted as of right in the M.L.-I.M. zone. In the alternative, the use falls within the broader scope of Section 253.1A.54 as a permitted use.

The Petitioner has requested area variances which are more particularly described above.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

Of particular concern is whether the Petitioner comes before this Commission with "clean hands" regarding the requested relief. Petitioner's own testimony indicated that the aggregate storage facilities, for which variances are sought, were constructed on the subject site without the requisite building permits. Mr. Schuster testified that it took approximately 35 days to construct the reclamation area and that the aggregate storage structure was constructed approximately 18 months prior to the hearing in this matter. He candidly admitted that he was aware at the time of construction that the aforementioned building permits had not been obtained or applied for from Baltimore County. It is a settled rule in Maryland that self-inflicted hardship will not be the springboard for the approval of zoning variances. In Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547 (1965), and its progeny, the Court made it abundantly clear that financial hardship will not be the basis for a zoning variance where the hardship was caused solely by the property owner. However, the particular facts of Petitioner's case require further analysis. Testimony presented indicated that only 3.19 acres more or less are actually developable due to a substantial part of the property being located within a flood plain and a portion of the property being dedicated to the Gwynns Falls Stream Valley Park System. Further, Mr. Schuster argued that the subject aggregate storage bins about Lot 2 on its southern side (See Petitioner's Exhibit 1) and are approximately 700 feet from Crondall Lane. The proposed batching plant's nearest Protestant, Catalyst Research, by Dr. Alan Schneider, stated that the storage bins are not visible from the northern side of Crondall Lane where Catalyst Research is located. Particularly noteworthy is the fact that testimony also indicated that the owner of Lot 2, who uses the property for office and warehouse space, has no objection to the current location or size of the aggregate bins. To require the Contract Purchaser to relocate the reclamation area and storage bins would cause undue financial hardship and practical difficulty, without curing any cognizable evil. The testimony presented indicated the Protestants' main concern is with the proposed use, with or without the variances.

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gate storage structure was constructed approximately 18 months prior to the hearing in this matter. He candidly admitted that he was aware at the time of construction that the aforementioned building permits had not been obtained or applied for from Baltimore County. It is a settled rule in Maryland that self-inflicted hardship will not be the springboard for the approval of zoning variances. In Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547 (1965), and its progeny, the Court made it abundantly clear that financial hardship will not be the basis for a zoning variance where the hardship was caused solely by the property owner. However, the particular facts of Petitioner's case require further analysis. Testimony presented indicated that only 3.19 acres more or less are actually developable due to a substantial part of the property being located within a flood plain and a portion of the property being dedicated to the Gwynns Falls Stream Valley Park System. Further, Mr. Schuster argued that the subject aggregate storage bins about Lot 2 on its southern side (See Petitioner's Exhibit 1) and are approximately 700 feet from Crondall Lane. The proposed batching plant's nearest Protestant, Catalyst Research, by Dr. Alan Schneider, stated that the storage bins are not visible from the northern side of Crondall Lane where Catalyst Research is located. Particularly noteworthy is the fact that testimony also indicated that the owner of Lot 2, who uses the property for office and warehouse space, has no objection to the current location or size of the aggregate bins. To require the Contract Purchaser to relocate the reclamation area and storage bins would cause undue financial hardship and practical difficulty, without curing any cognizable evil. The testimony presented indicated the Protestants' main concern is with the proposed use, with or without the variances.

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After due consideration of the testimony and evidence presented, to grant the relief requested in the Petition for Zoning Variance would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested in the Petition for Special Hearing should be denied and the Petition for Zoning Variances should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 21<sup>st</sup> day of July, 1989 that the Petition for Zoning Variance to permit a front yard setback of 0 feet in lieu of the required 25 feet; a side yard setback of 8 feet in lieu of the required 30 feet; and side yard setbacks between buildings/uses of 42 feet in lieu of the required 60 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

- 1) The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- 2) All commercial trucks shall be washed or hosed off prior to their departure from the subject site.
- 3) A gas-powered vacuum/sweeper and/or other acceptable means of removing debris (i.e. hand-swept) shall be run on that portion of Crondall Lane abutting Petitioner's property as required on days which the subject batching plant is receiving and/or discharging commercial trucks. A minimum distance of 50 feet within each side of the entrance to the property shall be kept free of debris by Petitioner.

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4) Petitioner shall erect along the eastern boundary of the subject property a screening/barrier wall, similar in type to the wall paralleling sections of the northeast loop of the Baltimore Beltway (I-695), which shall be a minimum of 16 feet in height. Said wall shall be constructed contemporaneously with the construction of the proposed batching plant.

5) No building permits shall be issued until the expiration of ninety (90) days of the date of this Order in view of the Petitioners' premature construction of the subject aggregate bins.

6) Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order; and,

IT IS FURTHER ORDERED that the proposed use of the property for a concrete batching plant be and is hereby approved as a principal use in an M.L. zone, and as such, the Petition for Special Hearing is hereby DENIED.

AMN:bjs

*Ann M. Nastarowicz*  
ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
for Baltimore County

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Re: PETITION FOR SPECIAL HEARING \* BEFORE THE DEPUTY  
and PETITION FOR VARIANCES \* ZONING COMMISSIONER  
S/S Crondall Lane, 468 feet \* OF BALTIMORE COUNTY  
east of c/l of Owings Mills \*  
Boulevard (3717 Crondall Lane) \*  
4th Election District; 3rd \*  
Councilmanic District \*  
CRONRIDGE INVESTORS, et al., \* Case Nos.: 89-506-SFH  
Petitioners in Case \* 89-464-A  
No. 89-506-SFH \*  
JOSEPH L. CARDINALE and \*  
DANIEL G. SCHUSTER, INC., \*  
Petitioners in Case \*  
No. 89-464-A \*

\*\*\*\*\*  
REPLY MEMORANDUM OF CRONRIDGE INVESTORS, ET AL.

At the conclusion of the hearing in these cases on June 13, 1989, the Deputy Zoning Commissioner stated that both parties would be permitted seven working days to submit concurrently any memoranda they chose to submit. Counsel for the Cronridge Petitioners (the seven petitioners in Case No. 89-506-SFH) did not interpret this statement as permitting the filing of any responsive or reply memoranda. For that reason, they were surprised to receive "Petitioner Schuster's Responsive Memorandum" by mail on or about June 30, 1989. After checking with the Deputy Zoning Commissioner to confirm that a reply memorandum would be accepted and considered, the Cronridge Petitioners are submitting this memorandum to address several points raised by Daniel G. Schuster, Inc. ("Schuster") in its memoranda.

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I. The Fact That the Subject Property Lies Within an IM District Does Not Alter the Uses Permitted in the Underlying ML Zone.

Schuster makes much of the fact that the subject property lies within an IM ("Industrial, Major") district and erroneously asserts that "[t]his designation authorizes the subject property to be developed with industrial uses which are more intense than those generally found in the ML zone." Schuster Memorandum, p. 10. This argument flies in the face of Section 259.1 of the Baltimore County Zoning Regulations ("BCZR"), which states: "In any district, the use ... regulations applicable in the zone upon which the district is superimposed shall govern except as may be specifically provided otherwise."

The only section of the Zoning Regulations suggested by Schuster as "provid[ing] otherwise" is Section 259.2.H. The second sentence of that paragraph (the only sentence relating to use) reads: "In I.M. Districts, greater industrial use of prime industrial land is promoted by discouraging none-auxiliary [sic] commercial usage" (footnote omitted).<sup>1</sup> To say that non-auxiliary

<sup>1</sup> In fact, the only references to the IM district in Sections 240-258 of the BCZR (those sections setting forth use and area regulations for the County's manufacturing zones) are in Sections 253.1.C and 253.2.B. Both of these sections apply to the ML zone. The first permits certain auxiliary retail, service, or semi-industrial uses as a matter of right in ML zones, but only in large planned industrial parks or in IM districts; and the second permits certain auxiliary service uses by special exception in ML zones, likewise, only in large planned industrial parks and IM districts. Thus, rather than discouraging auxiliary commercial uses, an IM district designation appears to permit greater latitude for the establishment of such uses.

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commercial uses are discouraged in IM districts is far from saying that an IM district designation changes the intensity of industrial uses otherwise permitted in the underlying zone. Schuster is simply wrong when it suggests that more intense industrial uses (such as concrete batching plants) are permitted on land designated ML-IM than on land otherwise zoned ML.

I.. Although the Issue in These Cases Is Not the Uses of the Cronridge Petitioners' and Other Nearby Properties, Schuster Is Nevertheless Wrong in Contending That Its Neighbors' Uses Are Inconsistent with Their ML-IM Zoning.

Tied to its insupportable argument that the IM district designation of the subject property permits more intense industrial uses is an equally insupportable contention that the types of lighter or cleaner industrial and accompanying office or warehouse uses currently existing or proposed for the Cronridge Petitioners' and other nearby properties are inappropriate for land designated ML-IM.

The only specific neighboring uses on which there is evidence in the record are the Catalyst Research facility, directly across Crondall Lane from the subject property, and two major tenants of the Seven, Eight, and Nine Crondall Associates Limited Partnership properties, about which Mr. James Flannery testified. The Catalyst Research facility produces batteries for cardiac pacemakers and gas-sensing medical equipment; the SmithKline Bio-Science Lab is a medical laboratory; and Jason Pharmaceuticals is a drug manufacturing operation. Mr. Flannery, as well as counsel for the Cronridge Petitioners, also generally

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characterized The Business Center at Owings Mills as containing office, high-technology, research and development, and warehouse uses in a campus-like setting.

All of these uses are expressly permitted by Section 253.1.A (industrial uses permitted as of right) (see Subparagraphs 253.1.A.12, "Drug manufacture, compounding, packaging, or treatment"; 253.1.A.25, "Instrument manufacture, of precision instruments ..."; 253.1.A.27, "Laboratories"; 253.1.A.33, "Offices or Office Buildings ..."; 253.1.A.42, "Radio assembly, or assembly of other electronic instruments or devices"; and 253.1.A.43, "Research institutes") or Section 253.1.B (transportation, storage, or quasi-public uses permitted as of right) (see Subparagraph 253.1.B.15, "Storage, warehousing, or wholesale distribution of any product whose ... final processing or production is permitted as of right as a principal use in M.L. zones; public warehousing").

Furthermore, there is absolutely no basis in the record for Schuster's self-serving assertion, on page 13 of its original memorandum, that "[t]ruck traffic [from the proposed Schuster facility] ... poses no greater concern than the traffic generated by the current development of the [Cronridge Petitioners'] property and the substantial development of the current undeveloped ML-IM land area which surrounds all existing development." (See also page 5 of Schuster Reply Memorandum: "the volume and size of trucks associated with [Schuster's] operation is not dissimilar to the volume and size of trucks used

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in connection with other uses permitted as of right in a ML zone.")

III. A Concrete Batching Plant Is Not Expressly Permitted as a Matter of Right or by Special Exception in an ML Zone, and Therefore It Is Prohibited.

Schuster uses several tactics in an attempt to get around the obvious fact that a concrete batching plant is not expressly permitted and is, therefore, under the holding in Kowalski v. Lamar, 25 Md. App. 493, 498, 334 A.2d 536 (1975), prohibited in an ML zone. First of all, Schuster shifts terminology and calls its proposed facility a "concrete production facility". (On the plat submitted with the petition in Case No. 89-464-A, the proposed use is stated plainly to be "concrete batch plant".) This is a transparent attempt to make the name of the proposed use look more like the use listed in Section 253.1.A.9 of the BCZR, "concrete-products manufacture, including manufacture of concrete blocks or cinder blocks". However, as the Cronridge Petitioners' expert, Mr. Neal FitzSimons, testified at the hearing in this case, the manufacture or production of concrete itself is not "concrete-products manufacture"; a batch of concrete is not a concrete product of the same nature as a concrete block or a cinder block.<sup>2</sup>

<sup>2</sup> In the same way that regulations for the ML zone permit "concrete-products manufacture", they also permit "cellophane-products manufacture or processing", "cork-products manufacture or processing", "fiber-products manufacture or processing", "food-products manufacture, compounding, packaging, or treatment", "fur-products manufacture or processing", "glass-products manufacture or processing", "horn-products manufacture or

The Cronridge Petitioners do not contend, as Schuster suggests on page 3 of its reply memorandum, that Section 253.1.A.9 does not embrace the manufacture of concrete products other than concrete blocks or cinder blocks; the provision certainly permits facilities that manufacture pre-cast slabs or panels, sound barriers, figurines, bird baths, curb stops, or other concrete products. However, it does not permit a concrete batching plant.

Were Schuster's interpretation of Section 253.1.A.9 (i.e., that it embraces the production of concrete itself) to prevail, then that provision might well encompass the production of bituminous concrete. This could not have been intended by the County Council, because "bituminous concrete mixing plant" is a use listed in Section 256.2 of the BCZR as permitted by right only in the MH zone.<sup>3</sup>

processing", "leather-products manufacture or processing", "metal-products manufacture or processing", "paper- and paperboard-products manufacture or processing", "plastic-products manufacture or processing", "shell-products manufacture or processing", "tobacco-products manufacture or processing", "wax-products manufacture or processing", and "wood-products manufacture or processing". Section 253.1.A.7, 9, 10, 16, 17, 18, 19, 22, 28, 30, 35, 38, 45, 48, 51, and 52. In each case, the Cronridge Petitioners submit that what the regulations permit is the manufacture or processing of items or articles of merchandise from the material named, even though that material itself may be a manufactured product. A concrete batching plant fits within Section 253.1.A.9 no more than a sawmill fits within Section 253.1.A.52 or a tannery fits within Section 253.1.A.28.

<sup>3</sup> However different ordinary concrete and bituminous concrete may be -- and there is no evidence on this point in the record -- the fact that the County Council

No doubt sensing the weakness of its argument with respect to Section 253.1.A.9, Schuster urges an even more strained interpretation of Section 253.1.A.54. In the face of extensive testimony at the hearing in this case -- some of it from Daniel Schuster himself -- on the differences between the processes used at a concrete batching plant and those used at a permitted concrete-products manufacturing operation, Schuster makes the unconvincing argument that, because a concrete batching plant involves the combination of raw materials, "[t]he processes employed in concrete production are identical to that of other products". Under this reasoning, any manufacturing operation that involves the combination of raw materials -- at least raw materials permitted to be used in production activities more specifically listed -- would be permitted in the ML zone. This construction would render the words, "made by processes permitted to be employed", in Section 253.1.A.54 meaningless. Further, in connection with Section 253.1.A.54, Neal FitzSimons, an expert in the concrete industry, gave his opinion at the hearing that a batch of concrete is not an "article of merchandise".

Perhaps implicitly conceding that a concrete batching plant is an offensive use not expressly permitted in and not compatible with other uses permitted in the ML zone, Schuster goes to great

identified a bituminous concrete mixing plant as a distinct use in Section 256 suggests that, if the Council had intended to permit a regular concrete mixing or batching plant as a matter of right in the ML zone, it would have listed that use separately.

lengths to point out how its plant will not share the same characteristics and will therefore not create the same adverse impacts as an ordinary concrete batching plant. However valid these arguments may be, they cannot transform Schuster's plant into anything other than a concrete batching plant, which is prohibited in the ML zone.

Moreover, Schuster creates a misleading impression when it indicates that its proposed Crondall Lane facility will be entirely or almost entirely indoors. Perhaps the concrete batching itself will be done indoors, but the site plan and the testimony clearly show that there will be a tremendous amount of outdoor activity: heavy trucks will be parked and maneuvered outdoors;<sup>4</sup> concrete trucks will receive delivery of concrete outdoors; concrete trucks will dump waste concrete in an outdoor reclaim area; and both concrete and supply trucks will travel in and out an entrance drive to the plant throughout the day from approximately 7:00 AM to 2 or 3:00 PM.

Even if most raw materials will be deposited in feed bins leading directly into the plant, it is undisputed that there will be exterior open storage of some aggregate; Mr. Schuster verified that aggregate is currently piled to a height of at least 9 feet within a structure having 6-foot walls on three sides and being open on the fourth side. Front-end loaders and other heavy equipment will be needed to manipulate the aggregate stored

<sup>4</sup> The site plan shows approximately 30 outdoor truck parking spaces.

outdoors, as well as to transfer components recovered from the on-site waste-concrete reclamation facility to the feed bins at the side of the plant. Were the proposed Schuster operation to be as contained as Schuster would have the Deputy Zoning Commissioner believe, there would be no need for noise barrier walls or for the street-sweeping and truck-washing operations of which Schuster's witnesses boasted.

Finally, Schuster attempts to invoke the doctrines of res judicata and stare decisis, or something akin thereto, in suggesting that the issue raised by the Cronridge Petitioners, the issue of whether a concrete batching plant is permitted as a principal use in the ML zone, has already been decided in a way that binds the Deputy Zoning Commissioner here. Schuster relies on the CRG approval given in this case, as well as on Petitioners' Exhibit 1, a 1985 "opinion" by the Zoning Supervisor. This reliance is misplaced.

First of all, neither the CRG approval in this case, nor any verbal confirmation of his 1985 "opinion" given in the context of this case by the Zoning Supervisor, is a binding decision here. As to the latter, even conceding that it might, under different circumstances, be accorded some weight, there is no evidence to suggest that, in showing the Zoning Supervisor a copy of his 1985 "opinion" and seeking confirmation of that statement, Schuster's site designer also showed the Supervisor the Deputy Zoning Commissioner's subsequent decision in Case No. 87-446-A, a

case involving the same property and the same issue as the Supervisor's 1985 "opinion".

The Cronridge Petitioners maintain that, far from being binding here, the 1985 "opinion" was not even the final word with respect to the very property dealt with there. Any force possessed by the 1985 "opinion" vanished when the Deputy Zoning Commissioner expressly declined to hold in 1987 that a concrete batching plant could be maintained at New Plant Road as a principal use. (See Petitioners' Exhibit 8.) As indicated in the Cronridge Petitioners' original memorandum, the decision in Case No. 87-446-A does not and was not, by its very terms, intended to have precedential value with respect to the issue of whether a concrete batching plant is permitted as a principal use in an ML zone.

IV. Variances Cannot Properly Be Granted in This Case, Not Only Because the Use Schuster Proposes Is a Prohibited Use, but Because Any Practical Difficulty or Unreasonable Hardship Is Self-Inflicted.

In its reply memorandum, Schuster contends that, since it is seeking area variances in Case No. 89-464-A, the standard of "practical difficulty", a less demanding standard than the standard of "unreasonable hardship", applies.<sup>5</sup> At page 7 of that memorandum, Schuster sets forth what is required to show "practical difficulty". The first and foremost inquiry in

<sup>5</sup> But Section 307 of the BCZR, which authorizes the Zoning Commissioner to grant only area variances, speaks of "practical difficulty" or "unreasonable hardship" in the disjunctive.

determining whether a variance is justified because of "practical difficulty" is "[w]hether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose ..." (emphasis added). Schuster Reply Memorandum, p. 7. Zoning authorities are clearly not called upon to bend the zoning regulations by granting variances to accommodate uses that are not permitted in the zone in question, whether or not it would be burdensome for the owner to comply with area regulations or the need to comply strictly with area regulations would prevent the owner from establishing a use he or she believes to be desirable.

Disregarding this basic problem with Schuster's variance case, and assuming arguendo that a concrete batching plant were a principal use permitted in the ML zone, the Cronridge Petitioners again submit that the variances requested here would be barred by the fact that any practical difficulty or unreasonable hardship is the result of Schuster's own premature and unlawful action in constructing aggregate storage and reclaim structures without necessary permits and approvals.

Schuster summarily dismisses the self-inflicted hardship argument by stating that it "is only a bar to the granting of area variances", citing Anderson v. Board of Appeals, 22 Md. App. 28, 89 [sic], 322 A.2d 220 (1974).<sup>6</sup> Schuster's memorandum goes on to

<sup>6</sup> Although the Anderson opinion recognizes a distinction between use and area variances and suggests that the standard of "hardship", involving a showing of taking in the constitutional

suggest that "the balance of the legal authority cited in [the Cronridge Petitioners'] Memorandum with respect to this issue is without significance in this case." Had Schuster not been so ready to ignore the cases cited in the Cronridge Petitioners' original memorandum, it would have found that the Court of Appeals of Maryland, as recently as 1986, approved the application of the self-inflicted hardship rule in a case involving solely area variances. Adams Soil, Inc. v. County Commissioners, 307 Md. 307, 513 A.2d 912. Likewise, the 1977 case of Wilson v. Mayor of Elkton, 35 Md. App. 417, 371 A.2d 443, involved an area variance to permit the construction of a stairway within a smaller-than-required rear yard. The Court of Special Appeals overruled the granting of the variance, in large part because the need for the variance arose from the acts of the property owner's predecessor in unlawfully extending a non-conforming use.

There is language in Zengerle v. Board of County Commissioners, 262 Md. 1, 276 A.2d 646 (1971), and in McLean v. Solay, 270 Md. 208, 310 A.2d 783 (1973), to suggest that the general rule, barring one who purchases property with the intention of applying for a variance with respect to certain zoning restrictions from later contending that those restrictions

sense, customarily applies to the former, whereas the less demanding standard of "practical difficulty" applies to the latter, the Court of Appeals did not, in that case, deal directly with the question of whether self-inflicted difficulties or hardships bar the granting of an area variance.



cause undue hardship, has been relaxed in the case of area, as opposed to use, variances. See also 3 A. & D. Rathkopf, The Law of Zoning and Planning (4th ed. looseleaf 1989), § 38.06[2]. While Maryland's highest court has relaxed, rather than completely discarded, this rather narrow rule in some cases involving area variances, it has never, to the Cronridge Petitioners' best knowledge, stated that the broader rule, barring variances in the face of self-inflicted difficulty or hardship, does not apply in cases involving area variances. Indeed, as pointed out above, both the Court of Appeals and the Court of Special Appeals have approved of the application of the broader rule in area variance cases where the applicants had created their own difficulties by proceeding with construction of facilities or with the extension of a nonconforming use in violation of applicable local zoning laws. See also Rathkopf, SUPRA, at § 38.06[1].

Likewise, in this case, where Schuster presented very little evidence (beyond vague and self-serving declarations of Mr. Schuster himself) that it had considered placement of its aggregate storage and reclaim facilities in locations that would comply with applicable setbacks -- undoubtedly because it had already knowingly constructed those facilities in violation of Baltimore County requirements and it would be costly to remove and relocate them -- the Deputy Zoning Commissioner should decline to grant variances to accommodate the proposed Schuster plant in a location where, as the Cronridge Petitioners

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emphasized in their original memorandum, it would have serious adverse impacts on surrounding uses.

One final point that deserves emphasis is that Schuster is not yet the owner of the subject property. The company can decline to exercise its purchase option and find a more appropriate location, in an MH zone, that will accommodate its proposed concrete batching plant. The subject property has been shown to be located in a very desirable, "campus-like", light industrial area, and there is no reason whatsoever to believe that the owner will not be able to use it himself, or to find a purchaser who will want to use it, for a facility that is compatible with surrounding uses and clearly permitted in the ML zone. Variances are not necessary to secure "substantial justice" for the owner of the subject property; to grant them would not be consistent with justice to the Cronridge Petitioners or other nearby property owners, who have invested substantial sums in businesses that are vital to Baltimore County's continuing economic development.

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#### CONCLUSION

For the reasons stated above and in their original memorandum, the Cronridge Petitioners again urge the Deputy Zoning Commissioner to issue her ruling in Case No. 89-506-SPH, that the concrete batching plant proposed by Schuster is not a use permitted on the subject, ML-zoned property, and to deny the variances requested in Case No. 89-464-A.

Respectfully submitted,

*John B. Howard*  
John B. Howard

*Robert A. Hoffman*  
Robert A. Hoffman

*Judith A. Arnold*  
Judith A. Arnold

Venable, Baetjer & Howard  
210 Allegheny Avenue  
P.O. Box 5517  
Towson, Maryland 21285-5517  
(301) 823-4111

Attorneys for the Cronridge Petitioners

15

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 1989, a copy of the foregoing Reply Memorandum was served by mail, first-class postage prepaid, on the following:

Julius W. Lichter, Esquire  
Howard L. Alderman, Jr., Esquire  
Levin & Gann, P.A.  
113 Chesapeake Building  
305 W. Chesapeake Avenue  
Towson, MD 21204

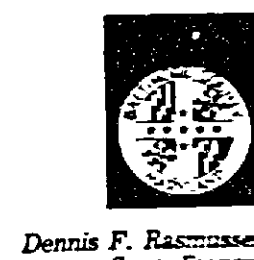
*Judith A. Arnold*  
Judith A. Arnold

MEMO0072.JAA

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Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3333  
J. Robert Haines  
Zoning Commissioner

July 21, 1989



Julius W. Lichter, Esquire  
305 W. Chesapeake Avenue, Suite 113  
Towson, Maryland 21204

John B. Howard, Esquire  
210 Allegheny Avenue  
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE (Consolidated)  
S/S Crondall Lane, 468' E of the c/l of Owings Mills Boulevard  
(3717 Crondall Lane)  
4th Election District - 3rd Councilmanic District  
Cronridge Investors, Inc., et al - Petitioners  
Case Nos. 89-464-A and 89-506-SPH

Dear Messrs. Lichter and Howard:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted and the Petition for Special Hearing has been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

*Ann M. Nastarowicz*  
ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
for Baltimore County

MVN:hjs

cc: People's Counsel

File

Re: PETITION FOR SPECIAL HEARING \* BEFORE THE DEPUTY  
and PETITION FOR VARIANCES \* ZONING COMMISSIONER  
S/S Crondall Lane, 468 feet \* OF BALTIMORE COUNTY  
east of c/l of Owings Mills \*  
Boulevard (3717 Crondall Lane) \*  
4th Election District; 3rd \*  
Councilmanic District \*  
CRONRIDGE INVESTORS, et al., \* Case Nos.: 89-506-SPH  
Petitioners in Case \* 89-464-A  
No. 89-506-SPH \*  
JOSEPH L. CARDINALE and \*  
DANIEL G. SCHUSTER, INC., \*  
Petitioners in Case \*  
No. 89-464-A \*

RECEIVED  
JUN 22 1989

#### MEMORANDUM OF LAW OF CRONRIDGE INVESTORS ET AL.

The Petitioners in Case No. 89-506-SPH (also the Protestants in Case No. 89-464-A), Cronridge Investors, Owings Mills III General Partnership, Crondall Lane Limited Partnership, Owings Mills Commerce Centre Limited Partnership, Seven Crondall Associates Limited Partnership, Eight Crondall Associates Limited Partnership, and Nine Crondall Associates Limited Partnership (collectively, the "Cronridge Petitioners"), owners of property either in or adjacent to The Business Center at Owings Mills, on the opposite side of Crondall Lane just east of the subject property,<sup>1</sup> have filed their petition in these consolidated cases to bring squarely before the Zoning Commissioner the question of whether a concrete batching plant is a principal use permitted by the Baltimore County Zoning Regulations ("BCZR") in the ML (Manufacturing, Light) zone. Their petition follows the petition filed earlier by the owner and the tenant of the subject property

<sup>1</sup> The westernmost of the Cronridge Petitioners' properties lies within several hundred feet of the subject property.

(Case No. 89-464-A), seeking certain variances to accommodate the location of various elements that have already been constructed on the property, without required approvals, as part of such a concrete batching plant.

#### Case No. 89-506-SPH

The Cronridge Petitioners rest their position in Case No. 89-506-SPH on the clear language of, and the evident intent underlying, the zoning regulations. Subsection 253.1, BCZR, provides that "[t]he uses listed in this subsection, only, shall be permitted as of right in M.L. zones" (emphasis added); similarly, Subsection 253.2, BCZR, provides that "[t]he uses listed in this subsection are permitted by special exception only." The long lists of uses included in Subsection 253.1 A through G and Subsection 253.2 A through D do not include "concrete batching plant", "concrete mixing plant", or any variation of those terms. Concrete batching plants are accordingly prohibited from the ML zone. See Kowalski v. Lanar, 25 Md. App. 493, 498, 334 A.2d 536 (1975), and cases there cited.<sup>2</sup>

The only listed use that relates expressly to the manufacture or processing of concrete or concrete products

<sup>2</sup> In Kowalski, a case arising in Baltimore County, the Court of Special Appeals, by Judge Rita Davidson, interpreted a former section of the BCZR framed in the same manner as Section 253. The court ruled that the former section, related to the RDP (Rural, Deferred-Planning) zone, "established that the only uses permitted...are those designated as uses permitted as of right and uses permitted by special exception. Any use other than those permitted and being carried on as of right or by special exception is prohibited."

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appears at Section 253.1.A.9, "[c]oncrete-products manufacture, including manufacture of concrete blocks or cinder blocks". According to the June 13, 1989 testimony of Neal FitzSimons, a civil engineer with significant expertise in varied aspects of the concrete industry, there are a number of important differences between a concrete batching plant and a concrete products manufacturing operation that make the former a heavier industrial use, less suited to the ML zone.

For example, a batching plant generally involves the exterior storage of large quantities of concrete components (primarily sand and gravel), whereas a concrete products manufacturing operation involves storage of smaller quantities of often smaller-size aggregate in a more controlled, interior environment, frequently in closed bins. Likewise, because of the fact that a batching plant must supply concrete to contractors on demand throughout the construction industry working day (7 a.m. to 2 or 3 p.m.), there is more continuous heavy truck traffic from such a plant than from a concrete products plant, which involves more controlled, "metered" production.

Mr. FitzSimons noted that a batching plant is generally an open, outdoor operation (which he likened to a construction site), whereas concrete products are manufactured within a closed building, similar to any other manufacturing facility. Because of the fact that much of the activity incident to a batching plant occurs outdoors, more dust is produced there (some from the grinding of concrete and its components under the wheels of heavy

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trucks) than at a typical concrete products plant. Another factor pointed out by Mr. FitzSimons, which causes a batching plant to produce more dust, is the lack of control at such a plant over the moisture content of the concrete mixture.

While attorneys for Daniel G. Schuster, Inc. ("Schuster") urged at the June 13, 1989 hearing that a batching plant might fall within the catchall at the end of Section 253.1.A of the BCZR (Section 253.1.A.54) for "[o]ther manufacture of articles of merchandise made from materials permitted to be used and made by processes permitted to be employed in the production activities more specifically listed above", this argument has no merit. As Mr. FitzSimons testified, a batch of concrete is neither a "concrete product" nor a manufactured "article of merchandise". Furthermore, even if it could be argued that a batch of concrete is "made from materials permitted to be used" in operations otherwise listed in Section 253.1.A, the processes employed in producing concrete at a batching plant are not the same as the "processes permitted to be employed in [permitted] production activities".

In addition to the indisputable omission of concrete batching plants from the exclusive list of uses permitted in the ML zone, Section 256 of the BCZR indicates that a concrete batching plant like the one being proposed by Schuster would be permitted only in the more intense MH (Manufacturing, Heavy)

zone.<sup>3</sup> Subsection 256.2 permits a "bituminous concrete mixing plant" to be located in an MH zone, but only if it is at least 300 feet from any residence zone and 200 feet from any business zone. Uses with many of the same noxious characteristics as a concrete batching plant (e.g., "processing of sand", "processing of gravel", and "crushing and processing of stone") are also listed in Subsection 256.4. To the extent that the listed use, "bituminous concrete mixing plant", and the other uses listed as permitted uses in the MH zone do not precisely cover the batching plant proposed by Schuster, that use would be covered by Subsection 256.3, BCZR, which permits, in the MH zone, "[a]ny other industrial or manufacturing use . . . when located at least 1000 feet from any residential zone and at least 500 feet from any B.L., B.M., or M.R. Zone."

The issue raised by this case -- whether a concrete batching plant is a permitted use within an ML zone -- has been presented

<sup>3</sup> At the June 13, 1989 hearing, Daniel Schuster indicated the locations of several batching plants in Baltimore County. The Cronridge Petitioners submit that these are all located in MH zones or are non-conforming uses, with the single exception of Mr. Schuster's New Plant Road facility. As discussed below, the New Plant Road facility, located in an ML zone, was permitted only as an accessory to an existing concrete construction business.

<sup>4</sup> The classification established by the BCZR makes eminent good sense, as testimony at the June 13, 1989 hearing, established. The dust, dirt, noise, heavy truck traffic, and other features incident to concrete batching plants and similar construction materials processing and production operations is highly incompatible with the kinds of light and relatively "clean" production, manufacturing, processing, and assembly operations for which the ML district was designed.

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to County zoning authorities on at least two prior occasions of which the Cronridge Petitioners are aware, by Daniel Schuster himself, or by others acting on his behalf. The Cronridge Petitioners maintain that the issue was not disposed of on either of those occasions.

First, in January of 1985, the engineer representing Daniel Schuster, who then proposed to install a concrete batching plant at another location in an ML zone, wrote to the Zoning Commissioner, stating his understanding that such a plant would be permitted under Section 253.1.A.9, BCZR, and asking for confirmation of that view. (See Petitioners' Exhibit 3.) Within two weeks, and evidently without receiving any detailed information concerning the nature of the proposed use, the Zoning Supervisor responded with a two-line notation on the engineer's letter, that the proposed use was permitted in the ML zone. *Id.* In rendering this quick opinion, it is evident that the Zoning Supervisor did not have the benefit of either factual or legal arguments to the contrary.

The fact that the Zoning Supervisor's 1985 opinion was rendered on the basis of very scant information and without legal argument seems to be the reason why it was not considered determinative -- indeed, why it was not even specifically cited -- when the issue was presented again in 1987. In Case No. 87-446-A, Daniel Schuster and his wife requested certain variances to accommodate location of a concrete batching plant silo on their ML-zoned property on New Plant Road (apparently the same

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property involved in the 1985 correspondence noted above). At a hearing before the Deputy Zoning Commissioner, evidence showed that the new silo would be located next to an existing batching operation. This operation had been set up on the same site where Daniel Schuster maintained a concrete construction business, including an office and warehouse, and evidence showed that about one-third of the redi-mix concrete produced at the batching plant was used on Mr. Schuster's own construction jobs. There was also other evidence indicating that the batching plant was accessory to Mr. Schuster's construction business, in that having the plant enabled Mr. Schuster "to schedule his construction work and be more competitive in his business." (See Petitioners' Exhibit 8.)

At the 1987 hearing, counsel for a nearby company that opposed the requested variances argued, as do the Cronridge Petitioners here, that a concrete batching plant was not a permitted use under the "concrete products manufacture" language of Subsection 253.1.A of the BCZR. *Id.*

In granting the variances requested in Case No. 87-446-A, the Deputy Zoning Commissioner left no question that she was doing so only on the basis of the evidence showing that the concrete batching plant would be accessory to Daniel Schuster's concrete construction business. To underline this point, the Deputy Commissioner placed two specific restrictions in her June 12, 1987 Order, as follows:

- 1) The batching portion of the operation must remain accessory to the Petitioners' concrete construction business.

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- 2) At any such time as the ownership of the property or the management of the concrete construction business should change, a public hearing will be required to determine whether the concrete batching plant may continue to operate in an accessory capacity and, indeed, whether a concrete batching plant may be allowed in an ML-IM zoned site under Section 253.1A of the BCZR or under Sections of the BCZR applicable at that time.

*Id.*

Because Case No. 89-464-A raises the question whether a concrete batching plant can be located in an ML zone as a principal use,<sup>5</sup> the Deputy Zoning Commissioner's decision in Case No. 87-446-A is not, and was clearly not intended to be, determinative. The Deputy Commissioner's June 12, 1987 Order is, on its face, inapplicable in circumstances such as those presented here.<sup>6</sup>

Case No. 89-464-A

The Cronridge Petitioners protest the granting of any variances in Case No. 89-464-A, first and foremost because, as established above, a concrete batching plant is a use that is prohibited entirely from the ML zone. Neither the area variances

<sup>5</sup> Both Daniel Schuster and his site planner/landscape architect, Thomas Hoff, admitted at the June 13, 1989 hearing that the batching plant to be constructed on the subject property would be the principal use. This testimony echoed similar admissions at the public CRG meetings held earlier this year.

<sup>6</sup> Because of the facial inapplicability of the Deputy Zoning Commissioner's decision in Case No. 87-446-A, the Cronridge Petitioners see no reason to argue here the merits of that decision. They respectfully submit, however, that a concrete batching plant may not be permissible in an ML zone, even as an accessory use.

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requested in this case, nor any other variances authorized by Section 307 of the BCZR, could validate a use that is prohibited in the underlying zone.

Even were this fundamental defect not present, however, the Deputy Zoning Commissioner could not properly grant the variances requested by the owner and tenant of the subject property, because the evidence produced at the hearing clearly established that any "practical difficulty or unreasonable hardship" in this case was caused not through the particular operation of the zoning regulations on the subject property, but rather by the acts of the tenant Schuster itself. As Daniel Schuster and Thomas Hoff both admitted, Schuster proceeded to create structures for aggregate storage and for the reclamation of leftover concrete without obtaining building permits or other approvals from Baltimore County. Aside from Mr. Schuster's testimony that the reclaim area was constructed over a period of 35 working days earlier this year, and that the stockpile or aggregate storage area was built from 18 months to 2 years before the hearing, admittedly without building permits having been obtained or even applied for, there was virtually no evidence to establish that Schuster could not comply strictly with the requirements of the BCZR, or that compliance would result in practical difficulty or unreasonable hardship.

The law in Maryland is quite clear that variances are not properly granted in cases of self-inflicted hardship. Indeed, the Maryland Court of Appeals has scoffed at several attempts,

similar to the one involved here, to use prior unlawful acts as the basis for an argument of hardship.

In Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547 (1965), an applicant who had proceeded with construction work before obtaining a building permit or applying for a variance tried to rely on the fact that the work had been substantially completed and could not be undone without financial hardship as the basis for a zoning variance. The Court of Appeals easily rejected this argument, quoting Rathkopf's discussion of self-inflicted hardship. (2 Rathkopf, The Law of Zoning and Planning, § 48-1).

Again, in Wilson v. Mayor of Elkton, 35 Md. App. 417 (1977), where an applicant argued that he needed a variance for an exterior stairway so that he would not be unfairly deprived of the right to continue using a third dwelling unit that had been unlawfully established in a residential building, the court had little difficulty in turning aside the argument. The court stated:

It approaches the ridiculous to say that the unlawful extension of the non-conforming use from two units to three units entitles the owner to the blessing of legitimacy for the violation of yet another law.

*Id.* at 427.

More recently, in Ad + Soil, Inc. v. County Commissioners, 307 Md. 307 (1986), the Court of Appeals sustained the denial of a variance, where the property in question was large enough that the applicant could have complied with all setback requirements, but proceeded to establish a sewage sludge storage and

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distribution facility after obtaining a State permit and before learning of local zoning requirements. The court agreed with the county board of appeals that any hardship faced by the applicant was self-inflicted.

Just as in the cited cases, Schuster cannot successfully obtain variances on grounds that the strict application of local setback requirements would result in practical difficulty or unreasonable hardship, where the reason for any such difficulty or hardship was its own unlawful action in erecting structures before obtaining building permits or fully investigating zoning requirements.

Additionally, Section 307 of the BCZR permits the granting of a variance only if it can be granted "without substantial injury to the public health, safety, and general welfare". In this case, there was ample evidence before the Deputy Zoning Commissioner that the granting of variances to accommodate the establishment of Schuster's concrete batching plant on the subject property would result in substantial injury -- in the form of noise, dust, heavy truck traffic, and aesthetic incompatibility -- to existing nearby business and residential properties.

Both the Cronridge Petitioners' expert witness, Neal FitzSimons, and Mr. Schuster himself, testified about the noxious characteristics of a concrete batching plant (although they disagreed on whether these characteristics were more noxious than those associated with a concrete products manufacturing

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operation). Both indicated that there would be large numbers of heavy trucks, carrying supplies into the batching plant and carrying concrete or concrete components from the plant, during a typical working day. Mr. Schuster himself estimated that there would be 25 redi-mix concrete trucks and 25 supplier trucks in and out each day and that these would be 65,000-pound trucks. According to Mr. FitzSimons, concrete trucks would be arriving and departing from the plant on a fairly continuous basis from approximately 7:00 a.m. to 2 or 3:00 p.m. each day; he pointed out that these trucks would have to ascend a rising grade on their way out of the site, and that their acceleration up the grade would generate a high noise level. There would also be bulldozers, front-end loaders, and other heavy equipment working on the site to maintain and manipulate stockpiles of concrete components. In addition, the dumping of leftover concrete would be at an outdoor reclamation area; these operations would be bound to create additional noise.

There was also evidence from both Mr. FitzSimons and Mr. Schuster about the serious dust problems incident to any concrete batching plant. Mr. FitzSimons noted that the constant truck traffic grinding any concrete components present on the site would generate a large amount of dust, and although Mr. Schuster emphasized measures he intended to institute to minimize dust pollution of the air and water, his testimony only served to underline the severity of the problem. Mr. Schuster acknowledged that the open aggregate stockpiles already on the subject

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property reach a height of 9 feet within 6 foot walls on three sides. The plats and testimony show that the subject property adjoins the Gwynns Falls; indeed, more than half of the site is within the Gwynns Falls floodplain, some of which Schuster proposes to dedicate to the County for a park. Clearly, operations of the type described by Messrs. Schuster and FitzSimons pose a threat to the continuing environmental health of these nearby wetlands.

Several witnesses appeared at the hearing to contest Schuster's establishment of a concrete batching plant on the subject property. Two of these were unrelated to the Cronridge Petitioners or to The Business Center at Owings Mills. Ms. Lisa Keir, Executive Director of The Valleys Planning Council, testified in opposition, objecting to the traffic, noise, dust, and aesthetic impacts of the proposed batching plant. Ms. Keir noted that plans called for an 80-foot tower or silo that could be seen from nearby residential areas. She explained that The Valleys Planning Council was especially disturbed by the prospect of heavy truck traffic traveling in an easterly direction from the subject property to Garrison Forest Road.

Dr. Alan Schneider, general manager of Catalyst Research, which is located directly across Crondall Lane from the subject property, testified as to the nature of Catalyst Research's business and its objections to the location of a concrete batching plant on the subject property. Catalyst Research makes batteries for cardiac pacemakers, as well as medical instruments

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designed to sense various gases. Dr. Schneider explained that standard filtration equipment now maintained a satisfactory interior environment for these high-technology manufacturing operations, but that he was very concerned that caustic concrete dust could be detrimental to them. He also emphasized the importance to Catalyst Research of the campus-like environment currently existing along Crondall Lane; the company had moved a major portion of its operations to Crondall Lane because of the physical surroundings that it felt contributed to a favorable image for a medical equipment company. Dr. Schneider testified that the previously discussed noxious characteristics of a concrete batching plant would have serious detrimental impact on his company, and that the granting of a variance to permit the storage of aggregate closer to the front of Schuster's property would only increase that impact.

Similarly, Mr. James Flannery, president of Riparius Development Corporation, a general partner in three of the Cronridge Petitioner partnerships, testified that the proposed concrete batching plant would adversely affect their properties in The Business Center at Owings Mills. Mr. Flannery stated that the major tenants of the 12 acres of The Business Center in which his company had an interest were SmithKline Bio-Science Lab, Inc. and Jason Pharmaceuticals, Inc. He, too, noted the importance of a high-quality physical environment and pointed out that there are protective covenants in The Business Center to safeguard this environment. He indicated that plans called for about 1,300,000

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square feet to be developed in The Business Center and confirmed that the total capital investment in The Center was from \$80 to 100 million.

The prospective adverse impacts of Schuster's proposed batching plant on the "aesthetic ambience" so valued by Dr. Schneider, Mr. Flannery, and their companies are detrimental effects that can furnish the basis for denial of a variance. See Dahl v. County Board of Appeals of Baltimore County, 258 Md. 157, 167 (1970). Thus, even were the Deputy Zoning Commissioner not precluded for other reasons discussed above from granting the variances requested here, the Commissioner should deny the variances because they cannot be granted without "substantial injury to public health, safety, and general welfare."

#### Conclusion

For the reasons discussed above, the Cronridge Petitioners urge the Deputy Zoning Commissioner to issue her ruling in Case No. 89-506-SPH in accordance with the clear import of the Baltimore County Zoning Regulations, which contain an exclusive list of permitted ML uses that does not include any entry for a concrete batching plant, and which relegate nonlisted industrial and manufacturing uses to the more intense MH zone. Because of this ruling, and for other reasons stated above, the Cronridge Petitioners also urge the Commissioner to deny the variances requested in Case No. 89-464-A.

15

Respectfully submitted,

John B. Howard  
John B. Howard

Robert A. Hoffman  
Robert A. Hoffman

Judith A. Arnold  
Judith A. Arnold

Venable, Baetjer & Howard  
210 Allegheny Avenue  
P.O. Box 5517  
Towson, Maryland 21285-5517  
(301) 823-4111

Attorneys for the Cronridge  
Petitioners

16

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of June, 1989, a copy of the foregoing Memorandum was served by mail, first-class postage prepaid, on the following:

Julius W. Lichter, Esquire  
Howard L. Alderman, Jr., Esquire  
Levin & Gann, Inc.  
113 Chesapeake Building  
305 W. Chesapeake Avenue  
Towson, MD 21204

MEM00068.JAA

Judith A. Arnold  
Judith A. Arnold

17

RE: PETITION FOR ZONING VARIANCE 7.23 ACRES  
Petitioner: Daniel Schuster, Inc.  
3717 Crondall Lane  
4th Election District  
3rd Councilmanic  
Baltimore County, Maryland

BEFORE THE  
ZONING  
COMMISSIONER  
OF  
BALTIMORE  
COUNTY

RE: PETITION FOR SPECIAL HEARING 7.23 ACRES  
Petitioner: Cronridge Investor, et al  
3717 Crondall Lane  
4th Electric District  
3rd Councilmanic  
Baltimore County, Maryland

CASE NO:  
89-464-A  
and  
CASE NO:  
89-506-SPH

\*\*\*\*\*

#### PETITIONER SCHUSTER'S RESPONSIVE MEMORANDUM

Daniel G. Schuster, Inc., ("Schuster") by its attorneys Julius W. Lichter and Levin & Gann, P.A., respectfully submit this Memorandum in response to the submission of Cronridge Investors, et al ("Protestants"). The arguments and reasoning contained in Schuster's Memorandum to the Zoning Commissioner remain compelling and valid and are incorporated herein by reference.

#### IM District

The Baltimore County Council has stated clearly its intent, as the legislative body of the County, relative to the uses permitted on the Schuster property and the 100 plus acres of which it is a part. The ML zoning classification of this property has superimposed upon it an "Industrial Major" District pursuant to BCZR 259.2H. It cannot be denied -- it can be overlooked or ignored as in Protestants Memorandum -- that Schuster's property and the property around it is to be developed with "major" industrial uses.

#### Bituminous Concrete

Protestants have raised, for the first time in their Memorandum, the fact that BCZR 256.2 permits a "bituminous concrete mixing plant" to be located in a MH zone subject to specified conditions. No testimony or evidence was presented at the hearing before you as to the use and operation of Bituminous Concrete Mixing Plants. To suggest that an intense use such as bituminous concrete manufacture is in any way analogous or remotely similar to the mere combination of sand, water, concrete and aggregate is, at best, a non sequitur. As Protestants are well aware, the production of bituminous "concrete" requires, in addition to other processing requirements, that a sand and stone mixture be heated to approximately 280 degrees farenheight and then further combined with asphalt heated to not less than 300 degrees farenheight. Moreover, the mixture must be kept heated until used as a final product. Such an operation is contrasted with concrete production where the primary combination is created with the non-offensive introduction of water. Clearly such an intense, high energy consuming use as bituminous concrete manufacture should be restricted to the MH zoning classification. Any attempted comparison of this use to that proposed by Schuster is incongruous.

#### Petitioner Schuster's Exhibit 3

Protestants suggest that a binding policy decision of the Zoning Supervisor, James E. Oyer, was rendered in a "quick"

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fashion and in disregard of supposed contrary arguments. Additionally, Protestants argue that then Deputy Zoning Commissioner Jung ignored this exhibit in 1987 when Mr. Schuster received approval of his concrete construction and batching plant on New Plant Court. There exists no factual basis for either allegation of Protestants. The letter from Mr. Dyer remains effective; in fact, the same position has been adopted recently during the CRG approval process of the subject property. The proposed use of this site was not an issue. The comments of the zoning office, which are part of the official CRG file, pertain to the requested variances. Obviously, if the proposed use was not permitted as of right, the CRG Plan could not have been approved. As an aside, Protestants' attempt to substitute their judgment, for that of Deputy Zoning Commissioner Jung, in footnote 6, does not warrant any constructive comment.

#### Use Permitted As of Right

Protestants suggest that under the rule of Kowalski v. Lamar, 25 Md. App. 493, 334 A.2d 536 (1975), unless all concrete products that could be manufactured as a matter of right are listed in Sections 253.1 and 253.2 of the BCZR, those not listed are prohibited. Such reasoning is contrary to the plain reading of Section 253.1A(9) which identifies two specific products by way of example only. Obviously, if the legislative body wanted to exclude the manufacture of concrete or of sound barriers or figurines composed of concrete, the "including language would never have been used."

Mr. Schuster takes great umbrage with Protestants' footnote 3. Not only did Mr. Schuster testify as to the existence of other concrete batch plants in Baltimore County, he cited at least one specific example of a newly constructed concrete batch plant in a ML Zone - that facility owned by Mr. Larry Knight. For the record, the location of this facility is zoned ML-IM, just as Daniel Schuster's property.

#### Batch Plant Operation

Protestants' continued reference to batch plants "generally" are totally without merit. These references ignore completely Mr. Schuster's testimony relative to the design and operation of his proposed facility. Unlike most batch plant operations, the proposed facility will be entirely contained within a building. Unlike other batch concrete operations, the raw materials needed to manufacture the product will be dumped into storage bins located underground and covered. The raw materials will be taken by conveyor to the top of the building for loading into the delivery trucks. These storage bins will protect the majority of the raw materials from the weather.

As Mr. Schuster noted, outside aggregate storage of raw materials will only result occasionally during peak demand periods. During these periods there will be limited movement outside of raw materials.

In fact, Mr. Schuster's proposed operation, being contained within a building, employing state-of-the-art environmental controls and high velocity dust baghouses render this operation

similar to any other manufacturing facility. Dust and particulate matter will be further controlled through Schuster's use of street cleaning machines and closed bin storage of materials. The enhancement by adding the truck washing facility will further ensure that dust and particulate matter are contained on site.

#### Section 253-1.A(54)

The Memorandum submitted by Schuster, and Mr. Schuster's testimony, articulate clearly that the product of concrete is made by combining four substances: sand, water, aggregate and cement. As noted in the Memorandum, the BCZR specifically refer to Webster's Dictionary for the definition and interpretation of terms not otherwise defined. When one applies the applicable definitions, concrete production in a ML zone cannot be denied. The processes employed in concrete production are identical to that of other products: the combination of raw materials.

#### Off-Site Effects

Protestants allege that the proposed use will result in a detriment to off-site properties. Traffic has been spotlighted because of the use of concrete trucks in the proposed operation. However, as Mr. Schuster noted in his testimony, the volume and size of trucks associated with his operation is not dissimilar to the volume and size of trucks used in connection with other uses permitted as of right in a ML zone.

The noise associated with concrete production on this site will be analogous to that which results at Mr. Schuster's other

concrete production facility and that of Mr. Larry Knight. There are, however, two distinct differences. First, the proposed operation will be almost completely self-contained within a building. Second, Schuster proposes to erect a barrier wall to reduce any off-site noise. It is curious to note that Protestants have totally eliminated any discussion of these factors from their Memorandum.

In addition to the required dedication of floodplain land, Schuster is dedicating a portion of the subject site as part of the Gwynns Falls Stream Valley Park System. Over 4 acres will be removed from potential utilization and will serve as a further buffer of the proposed use. All environmental factors have been weighed and approved by the relevant County agencies.

#### Requested Variances

Schuster has testified candidly regarding the erection of the three-sided structures for which variances are sought. These structures were erected by agents of Schuster without first obtaining the necessary permits. This fact was dealt with at the CRG level when Schuster's Petition for Variance and Building Permit Applications were filed. The requested variances are necessary due to the massive portion of the site which must be dedicated to the County. The proposed structures are efficiently located in the only areas that permit the proposed facility to operate and assure its effective integration in the ML-IM zone.

In their Memorandum, Protestants suggest that Schuster's erection of these structures before obtaining the necessary

variances is somehow fatal as a matter of law. Schuster agrees with Protestants that the law in Maryland is clear relative to the granting of variances. The seminal case regarding variances is Anderson v. Board of Appeals, Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974). The Court of Special Appeals reiterated the long standing rules of the Maryland Court of Appeals pertaining to the differing standards for the granting of use as opposed to area variances. (The Zoning Commissioner cites this case as the leading authority in its materials supplied to property owners applying for variances).

Schuster is seeking area variances i.e. variances from setback restrictions and the distance required between buildings. As such, the standard of 'practical difficulty' applies and requires a showing that:

- 1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." McLean v. Soley, 270 Md. 208, 21-215, 310 A.2d 783, 787 (1973), quoting 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972).

Anderson at 89.

The "self-inflicted hardship" alluded to by Protestants is only a bar to the granting of use variances, and is therefore inapplicable to the instant action. Id. at 89. Likewise, the balance of the legal authority cited in Protestant's Memorandum with respect to this issue is without significance in this case.

Schuster has shown that compliance with the strict letter of the BCZR would be unnecessarily burdensome and that the relief sought is the minimum relief necessary for the use of the property for a permitted purpose. The evidence is overwhelming that the proposed use, as enhanced voluntarily by Schuster's state-of-the-art design and the necessary variances will do substantial justice to Schuster and other property owners in the district, while securing public safety and welfare.

#### CONCLUSION

Daniel G. Schuster, Inc., for the reasons stated above and those contained in its original Memorandum to the Zoning Commissioner, requests that the Deputy Zoning Commissioner grant the requested variances, in accordance with long standing Maryland law, and find that a concrete production operation as

proposed by Schuster is permitted as of right in a ML-IM zone.

Respectfully submitted,

Julius W. Lichter  
Julius W. Lichter  
Levin & Gann, P.A.  
605 W. Chesapeake Ave.  
Suite 113  
Towson, Maryland 21204  
(301) 321-0600

Attorneys for Daniel G. Schuster, Inc.

#### CERTIFICATION OF SERVICE

I HEREBY CERTIFY, that on this 20th day of June, 1989, a copy of the foregoing Petitioner Schuster's Responsive Memorandum was mailed, via First Class Mail, postage prepaid, to John B. Howard, Esquire, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, Maryland 21204.

Julius W. Lichter  
Julius W. Lichter

RE: PETITION FOR ZONING VARIANCE 7.23 ACRES  
Petitioner: Daniel Schuster, Inc.  
3717 Crondall Lane  
4th Election District  
3rd Councilmanic  
Baltimore County, Maryland

BEFORE THE  
ZONING  
COMMISSIONER  
OF  
BALTIMORE  
COUNTY

RE: PETITION FOR SPECIAL HEARING 7.23 ACRES  
Petitioner: Cronridge Investor, et al  
3717 Crondall Lane  
4th Election District  
3rd Councilmanic  
Baltimore County, Maryland

CASE NO:  
89-464-A  
and  
CASE NO:  
89-506-SPH

#### MEMORANDUM TO THE ZONING COMMISSIONER

Daniel Schuster, Inc., by its attorneys Julius W. Lichter and Levin and Gann, P.A., respectfully submits the following Memorandum.

#### STATEMENT OF FACTS

Daniel Schuster, Inc. ("Schuster"), a Maryland Corporation, is the lessee of a 7.23 acre tract of land located at the rear of 3717 Crondall Lane (South side of Crondall Lane), Owings Mills, Maryland. Additionally, the subject site is located in a ML zone and overlain with an IM district. The Protestants in this matter own property on the North side of Crondall Lane in the vicinity of the subject premises. The Protestants' property, as well as the surrounding area, are also zoned ML-IM.

In January of 1989, Schuster initiated the formal administrative procedures necessary to obtain County approval to